

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF TENNESSEE
3 NASHVILLE DIVISION

FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENN.

MAR 02 1998

BY JH
DEPUTY CLERK

4 ABU-ALI ABDUR' RAHMAN,

5 Plaintiff,

6 vs.

7 RICKY BELL,

8 Defendant.
9
10

Civil Case # 3-96-0380
Beginning February 6, 1998

CLERK'S COPY

11 TRANSCRIPT OF HEARING
12 BEFORE THE HONORABLE TODD J. CAMPBELL
13

14 APPEARANCES:

15 For the Plaintiff:

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William P. Redick, Jr.
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Nashville, TN

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18 For the Defendant:

John H. Baker, III &
Don Ungurait
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24 Official Court Reporter:

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1 February 13, 1998

2 THE COURT: Day six. Mr. Redick, Mr.
3 MacLean, do we have witnesses?

4 MR. REDICK: Yes.

5 MR. MACLEAN: Yes. Before that, I would
6 like to introduce some exhibits into evidence, if I may.

7 THE COURT: All right.

8 MR. MACLEAN: First I believe will be
9 Exhibit Number 148, I would like to submit the affidavit
10 of Wayne Allen Boyd -- I mean deposition. I am sorry.

11 THE COURT: Any objection?

12 MR. BAKER: We would object that it is
13 hearsay and not anything appropriate for the Court to
14 consider in this case.

15 I have spoken to Mr. Boyd's and Mr.
16 Beard's attorney. He indicated they will not be
17 voluntary witnesses so the state is not going to call
18 them as witnesses today. That is where we are on that.

19 I would object to the consideration of
20 these depositions.

21 THE COURT: Let me slow down here for a
22 minute. Mr. Boyd and Mr. Beard, if I understand it, are
23 not going to be called by the state?

24 MR. BAKER: Yes, Your Honor.

25 THE COURT: And part of that decision is

1 that when you say they are not going to be voluntary
2 witnesses, they --

3 MR. BAKER: They intend to invoke the
4 Fifth Amendment is what I have been told by their
5 attorney.

6 THE COURT: All right. In terms of
7 whether it is hearsay or not, it doesn't seem to fall
8 under 801, exceptions to hearsay. Prior statement of a
9 witness requires a witness to testify at trial, and they
10 are not statements of party opponents.

11 So, we are in to 803 or 804.

12 Mr. MacLean.

13 MR. MACLEAN: Your Honor, it is not
14 hearsay under the definition. These are verbal acts.
15 They did not -- other than stating their name -- they did
16 not make any statements which have any truth -- we are
17 not submitting these depositions to prove the truth of
18 the matter stated.

19 Instead, they made verbal statements, they
20 asserted the Fifth Amendment. This is proof that they
21 asserted the Fifth Amendment. It doesn't fall within the
22 definition of hearsay.

23 MR. BAKER: Your Honor, I think these are
24 language hearsay. It is not acts in that sense. Also
25 because these witnesses have not stated anything, there

1 is nothing relevant or material to these depositions for
2 the proceedings.

3 THE COURT: Well, the unspoken part of
4 this is you are going to get it into the record in an
5 attempt to argue an inference and whether Mr. Baker is
6 going to keep it out of the record for an inference.

7 Let's go and speak on the unspeakable. It
8 is now on the record. These are certainly out of court
9 statements. As I understand what you're saying, Mr.
10 MacLean, they are not being offered for the truth of what
11 is in there, they are being offered for, I guess you
12 would say, notice to the court or to the world that they
13 have invoked their privilege.

14 Is that your argument?

15 MR. MACLEAN: Yes. Understand, we start
16 with the definition of a statement. Hearsay has to be a
17 statement. Rule 801 defines statement as an oral or
18 written assertion or nonverbal contact of a person if it
19 is intended by the person as an assertion.

20 I believe the meaning of that is that the
21 declarant has to be asserting some fact, some knowledge
22 of his or herself in order for it to fall within a
23 definition of a statement and, therefore, within the
24 definition of hearsay.

25 When someone performs a verbal act, for

1 example I accept your offer to a contract, that is not
2 hearsay. That is a verbal act that has its own meaning
3 or has a significance that is not attached to any kind of
4 truth value, but that the statement is being made for.

5 It certainly doesn't fall within the
6 definition of statement. That always has been my sort of
7 elementary understanding of hearsay. You start with that
8 proposition.

9 So, it is not hearsay in our view. The
10 question whether it is relevant or material is something
11 that I understood we might be briefing or would be happy
12 to brief.

13 We believe that a negative inference can
14 be drawn from the fact that they are unavailable or that
15 they are refusing to testify. They were on the state's
16 witness list and the state announced they intended to
17 call them as witnesses earlier, and now they are not.

18 But that is something we would prefer to
19 brief, Your Honor, because it is an issue that requires
20 some research. We have done some but I am not prepared
21 to present that argument in the fashion I think Your
22 Honor should consider it.

23 I think the relevancy or materiality of
24 it is going to be argued but as far as the hearsay issue
25 is concerned, it simply doesn't constitute a statement

1 that has truth value, not a statement that we are trying
2 to introduce in evidence to prove the truth thereof.

3 MR. BAKER: Your Honor, it is exactly a
4 statement, that they invoked their Fifth Amendment. That
5 is exactly the purpose he wants to submit this for. We
6 certainly think it is a hearsay statement.

7 MR. MACLEAN: If they had said at one time
8 I invoked the Fifth Amendment that would be a statement
9 about something that happened in the past. That would be
10 a statement that would fall within the definition of the
11 hearsay rule. I last Tuesday invoked the Fifth
12 Amendment. That is a statement. That is out of court
13 and hearsay.

14 If I say I hereby invoke the Fifth
15 Amendment, that is not that kind of statement. It is a
16 verbal act.

17 MR. BAKER: My understanding of hearsay,
18 it is hearsay if it is talking about something in the
19 past. It is hearsay.

20 MR. MACLEAN: It could be in the present.
21 I saw. I see Mr. Miller invoking the Fifth Amendment.
22 Then that would be a present statement about what is
23 happening in the present. But that is a statement with
24 truth value. It is talking about what is happening in
25 the world or what happened in the world. It is not an

1 act.

2 THE COURT: Why isn't the declarant
3 unavailable, and being unavailable why isn't it admitted
4 as former testimony of an unavailable witness?

5 MR. MACLEAN: It is. That is the other
6 justification for it, Your Honor. It is just not hearsay
7 to begin with.

8 I will certainly argue either proposition,
9 that either is admissible because the witness is not
10 available or hearsay. It is just not hearsay.

11 I mean, if that were hearsay you couldn't
12 prove an oral contract in court unless you brought the
13 witness in and said, yes, I said I accepted that
14 contract.

15 THE COURT: I don't think that is true.
16 You would have the admission of party opponent. That is
17 always admitted that way.

18 Definition of unavailability.
19 Unavailability as a witness includes situations in which
20 the declarant, number one, is exempted by ruling of the
21 court from the grounds of privilege from testifying
22 concerning the subject matter of declarant's statement
23 or, number two, persists in refusing to testify
24 concerning the subject matter of declarant's statement
25 despite an order of the court to do so or, three,

1 testifies to a lack of memory of the subject matter of
2 the declarant's statement and, four, unable to be present
3 or testify at the hearing because of death or then
4 existing physical or mental illness or infirmity or,
5 five, absence from the hearing and procurement of the
6 statement and proponent of the statement has been unable
7 to secure the deponent's attendance by process.

8 Declarant is not unavailable as a witness if exemption,
9 refusal claim, of lack of memory, inability or absence is
10 due to the procurement after -- of the proponent of the
11 statement for the purpose of preventing the witness from
12 attending or testifying.

13 I make the following observations.

14 Definition of unavailability includes -- it does not say
15 is or shall mean, includes. I think that means there can
16 be circumstances in the discretion of the court whether
17 someone is unavailable.

18 Item number one is exempted by court
19 ruling because of privilege. Item number two is persists
20 in refusing to testify concerning the subject matter
21 despite an order of the court to do so.

22 Those two provisions do not precisely
23 apply because they are not exempted by order of the court
24 on the ground of privilege, although they asserted a
25 privilege.

1 Number two, there hasn't been persistent
2 refusal despite an order of the court to do so. However,
3 it is apparent from the course of this proceeding that
4 this court had the United States Marshals have them
5 appear at a deposition and that they invoked their Fifth
6 Amendment right and if called to testify today they would
7 invoke their Fifth Amendment right. That has been the
8 representation to the court.

9 And further apparent that if they invoke
10 their Fifth Amendment right, that will be a privilege
11 that the court would have to defer to. I couldn't make
12 them testify contrary to the Fifth Amendment privilege.
13 If they refuse to say anything, I could take action.
14 But if they invoked their privilege, I couldn't take
15 action.

16 Nothing has been presented to the court
17 that they have immunity. I think they are unavailable.

18 Now, otherwise people could simply take
19 the Fifth Amendment and exempt themselves from any
20 consideration in this proceeding as well as common sense
21 notion if you refuse to answer you are unavailable. I
22 read 804(a) to include those situations. It is within
23 the spirit of that provision.

24 Having said that about one former --
25 testimony given by a witness at another hearing of the

1 same or different proceeding or in a deposition taken in
2 compliance with the law and in the course of the same or
3 another proceeding -- we have a deposition in the same
4 proceeding. If the party whom the testimony is now
5 offered or in a civil action or proceeding a predecessor
6 in interest had an opportunity and similar motive to
7 develop the testimony by direct, cross or redirect
8 examination. All parties were present at the
9 deposition.

10 Now, rule 807 -- it is in the supplement
11 statement not previously covered by 803 or 804 but of
12 equivalent circumstantial guarantees of trustworthiness
13 is not excluded by the hearsay rule if the court
14 determines that the statement is offered as evidence of
15 material fact, the statement is more probative on the
16 point for which it is offered than any other evidence
17 which the proponent can procure through reasonable
18 efforts and the general purposes of these rules and in
19 the interest of justice will be served by admission of
20 the statement into evidence.

21 However, a statement may not be admitted
22 under this exception unless the proponent makes known to
23 the adverse party sufficiently in advance of the trial or
24 hearing to provide the adverse party with fair
25 opportunity to prepare to meet it, the proponents

1 intention to offer the statement and the particulars of
2 it, including the name and address of the declarant.

3 I think that applies. I also have
4 considered Rule 403 balancing the prejudice and probative
5 value and I think that balance weighs in favor of the
6 court being aware of these individuals invoking their
7 Fifth Amendment privilege.

8 On the question whether it is hearsay at
9 all, I am inclined to believe that a statement invoking
10 the Fifth Amendment privilege is not asserted for the
11 truth thereof. It is like, almost like, equivalent of
12 the acknowledgement if someone screams help that that is
13 not hearsay. It is offered to prove the utterance rather
14 than to prove that they actually needed help. They were
15 screaming help. They may not have needed help.

16 I think the Fifth Amendment privilege is
17 in that vain. I wasn't there. I say this somewhat
18 tongue in cheek, it may rise to excited utterance on the
19 contents. I wasn't there. I can't say.

20 So, I am going to let that in. While we
21 are on depositions, before -- I know you have a list up
22 there. You have the list-look on your face. I have on
23 my desk the deposition of Mr. Delagrang and Bishop. I
24 don't know if this is just one of the misdeliveries
25 intended for someone here and not me.

1 In any event, I haven't read those things.

2 Are these supposed to be offered?

3 MR. MACLEAN: They already have been
4 offered. Mr. Bishop's deposition was Exhibit 135 and Mr.
5 Delegrange's deposition was Exhibit 136. We offered them
6 in evidence a couple days ago.

7 THE COURT: All right. Let me give these
8 to you, Ms. Bush. You should have had them. Here is Mr.
9 Boyd.

10 I assume if you're going to offer Mr.
11 Boyd, you are going to offer Mr. Beard?

12 MR. REDICK: Yes, that is next.

13 MR. MACLEAN: Yes. That is the next one.
14 We would ask Mr. Beard's be marked Exhibit 149.

15 THE COURT: All right. Mr. Baker has the
16 same objection and I have the same ruling.

17 MR. BAKER: Yes.

18 THE COURT: Your objection is preserved.

19 MR. MACLEAN: Your Honor, I want to make
20 sure I have the numbers right here.

21 The next exhibit we would like to
22 introduce in order to make the record complete is the
23 entire MTMHI file. We referred to portions of it. Dr.
24 Craddock testified to it. I have the cover letter sent
25 to me by counsel in response to the our subpoena. It

1 discusses what is included in the file they sent to me.

2 We would like to introduce that in
3 evidence as Exhibit 150.

4 THE COURT: All right. Any objection to
5 that?

6 MR. BAKER: No objection. I believe
7 another copy is also in the post conviction file.

8 THE COURT: All right.

9 MR. MACLEAN: Your Honor, as Exhibit
10 Number 151, we would like to introduce one of the
11 documents from the MTMHI file because we would like to
12 draw the Court's attention to one item in that document.
13 This is a dispositional staffing report dated February
14 19, 1987. We would like that marked as Exhibit 151.

15 Your Honor, I have highlighted on that
16 exhibit at the bottom of page two the language where they
17 are talking about their interview with James Jones at
18 MTMHI during the period he was there in January and
19 February of 1987.

20 We asked about the evidence, the shotgun,
21 the black coat, the blood on the pants. That is really
22 for that purpose we are introducing this exhibit.

23 Your Honor, finally, we would like to
24 introduce in evidence as Exhibit 152 another deposition
25 we took. That is deposition of Richard Edward Bretzlauf.

1 The deposition was taken in this case. Mr. Bretzlauf was
2 the petitioner's employer in Chicago in 1984.

3 THE COURT: Any objection?

4 MR. BAKER: No objection, Your Honor.

5 MR. MACLEAN: That is Exhibit Number 152.

6 That completes my list, Your Honor, and we
7 are prepared to call our next witness if the Court is
8 ready for that.

9 THE COURT: Mr. Baker, do you have any
10 housekeeping?

11 MR. BAKER: If you would like to take that
12 up now, we could. I had a couple things on our exhibits.

13 I believe our exhibits, Defendant's
14 Exhibits 4, 5 and 6, I am not sure if I formally offered
15 them in evidence earlier. If I didn't, I will move now.

16 THE COURT: I think you did. To make sure
17 that there is no confusion, those are admitted.

18 MR. BAKER: With regard to Defendant's
19 Exhibit 6 which is the prison record we submitted, we
20 also compiled a summary for assistance to the Court in
21 viewing those records and we would offer that under Rule
22 1006 as an aid to the court.

23 THE COURT: All right.

24 MR. MACLEAN: We would object to that. I
25 didn't have that with me. We had it before. There were

1 some gratuitous comments -- not many -- on this that
2 doesn't reflect exactly what were in the documents.

3 THE COURT: Who prepared the summary?

4 MR. BAKER: I did, Your Honor.

5 MR. MACLEAN: I think the witness that
6 prepared the summary has to testify to that. I would
7 propose if he wishes to use this that they attach it as
8 appendix to their brief or whatever and that way the
9 Court can obtain whatever assistance they want to obtain.

10 As a piece of evidence in this case, we
11 would object.

12 MR. BAKER: Alternatively if the Court
13 doesn't believe it should be a piece of evidence, we
14 would offer it as like a demonstrative type aid in
15 viewing the documents.

16 THE COURT: I think technically under 1006
17 we have to have a witness that testifies how they
18 compiled it. I am comfortable in marking it as an
19 exhibit without admitting it into evidence and viewing it
20 as a document from counsel to aid the Court in finding
21 relevant information.

22 We will mark it but not have it as
23 affirmative evidence. I think it will be helpful in
24 going through the record.

25 At times I feel like an archaeologist or

1 paleontologist, and those things can help me.

2 MR. BAKER: I marked it 6 A.

3 THE COURT: All right. That won't be
4 marked as an exhibit but it will be marked 6 A as an aid
5 to understanding Exhibit 6 in the nature of an index.

6 MR. BAKER: That is it, Your Honor.

7 THE COURT: All right.

8 MR. MACLEAN: Just as a matter of
9 housekeeping, we do not intend to introduce any further
10 exhibits. To make the record clear, we do move in
11 evidence all the exhibits that are in the binder that we
12 submitted to the Court together with Exhibits 110
13 through -- I guess we are up to 152 -- to make the record
14 clear, we move those in evidence.

15 THE COURT: Those are admitted. Are we
16 ready for a witness?

17 MR. MACLEAN: Yes. I would like to call
18 to the stand Sarah Roberts Walton.

19 THE COURT: Good morning. Step forward.
20 Raise your right hand, please.

21 (Whereupon, the witness was duly sworn.)
22
23
24
25

EXAMINATION OF SARAH ROBERTS WALTON

BY MR. MACLEAN:

Q. Ms. Walton, you are from Augusta, Maine, correct.

Q. That's correct?

Q. You were the fiancée of James Jones back in 1984?

A. Yes.

Q. Tell the court what your occupation is.

A. I am an attorney for the State of Maine. Right now I am counsel for the Maine State Retirement System. I have held that position since the beginning of November.

Prior to that for almost eight years I was an Assistant Attorney General of the State of Maine.

Q. You are a Quaker, is that correct?

A. Yes, I am.

Q. Where did you graduate from college?

A. Earlham College, a Quaker college in Indiana.

Q. When what that?

A. 1981.

Q. When you graduated from Earlham, what did you do?

A. I went back to Maine where I had grown up. It was in the middle of a recession, hard to find a job. I had taken the federal service examine and based upon that I had an opportunity to work for the Social Security Administration in Chicago. So, that is what I did.

1 Q. That was in 1981?

2 A. Yes.

3 Q. And you worked for the Midwest Social Security
4 Office in Chicago?

5 A. Their midwest regional office.

6 Q. I just want to go through your general history and
7 then we will get back to Mr. Jones in a moment.

8 And then in February of 1985, you went to
9 work as a paralegal in Chicago, is that right?

10 A. That's correct.

11 Q. And then what followed that in the history of your
12 career?

13 A. Then I went to law school at New York University
14 School of law and after that I went back to Maine where I
15 became an Assistant Attorney General.

16 Q. What kind of work did you do at the Attorney
17 General's Office up in Maine?

18 A. Did a lot of different kinds of work representing
19 the State of Maine. I represented a lot of state
20 agencies.

21 I also represented the State of Maine in
22 two murder appeals to Maine's highest court, which is the
23 Maine Supreme Judicial Court. I represented the state in
24 a lot of Department of Labor cases, environmental
25 protection cases. Things like that.

1 Q. Could you explain to the court your Quaker beliefs
2 and your Quaker background?

3 A. My family is Quaker. As a Quaker, I have a very
4 strong belief in equality of all persons and as a Quaker
5 the commandments to love thy neighbor as thyself means
6 one works toward an ideal world which there is social
7 justice and which all persons are treated with dignity.
8 That is, basically as a Quaker that exhibits itself in
9 working toward social justice.

10 Q. Now, when you were in Chicago back in 1983 and
11 '84, were you involved in any church or religious related
12 organizations?

13 A. Yes, I was. Starting in February of '93, I was
14 involved with the Yoke Fellows Prison Ministry. It is a
15 prison ministry started by a Quaker but it is enter
16 interdenominational.

17 As part of that program, I was one of the
18 group leaders for a weekly religious program that was
19 conducted at the Metropolitan Correctional Center in
20 Chicago.

21 Q. Were you also a member of the Fellowship of
22 Friends?

23 A. Yes.

24 Q. Explain what that is.

25 A. Fellowship of Friends was an inner-city youth

1 ministry primarily. It was in Cabrini-Green, a housing
2 development, housing project in Chicago, very, very poor.
3 It also had a very high crime rate for a lot of gang
4 activities.

5 About 14,000 people living in
6 Cabrini-Green, three fourths of them were under the age
7 18, had a lot of gang violence, drug activity and that
8 sort of thing.

9 This ministry program reached out to
10 mostly the young people in Cabrini-Green but we did have
11 people in our ministry from babies through to adulthood.
12 The program served between a 150 to 200 people a week.
13 We had recreational programs, spiritual programs, we had
14 church, we had a lot of involvement with tutoring
15 programs, tutoring the young people as well.

16 I drove a van for the program as well as
17 helping with the other programs. The importance of
18 having a van was to be able to help the children and
19 young people go across different gang boundaries safely.

20 Even when young people left there, they
21 moved away from Cabrini-Green, they basically wanted to
22 come back to our program.

23 So, I would drive out to the neighborhoods
24 where they were to bring them for activities we had. We
25 had a lot of planned activities.

1 Q. How do you know James Jones?

2 A. I met him at the Metropolitan Correctional Center
3 while I was taking part in the Yoke Fellows Prison
4 Ministry program.

5 Q. Was the Metropolitan Correction Center sometimes
6 referred to as MCC?

7 A. Yes. It is a federal facility in downtown Chicago
8 for federal prisoners. I think a lot of them were sort
9 of in transition. I am not sure.

10 Q. This was part of your work with the Yoke Fellows
11 Prison Ministry?

12 A. Yes.

13 Q. Was this in the latter part of 1983 you met James
14 Jones?

15 A. I believe in the fall of 1983.

16 Q. Tell us about the history of your acquaintance and
17 then the relationship with James Jones up until the end
18 of '83 or early part of 1984.

19 A. I remember being very struck by his singing
20 ability during -- or during the weekly programs as well
21 as doing Bible studies was also singing. When he sang,
22 they were solos I am talking about, he sang gospel songs
23 and hymns. He sang it with a tremendous amount of
24 feeling. He has a fabulous singing voice and very
25 moving. He really sang from the heart.

1 I remember some of the hymns, particularly
2 Precious Lord Take My Hand, Balm in Gilead and an Andrae
3 Crouch song called Through it All.

4 Q. So, you were struck by that.

5 How did you develop a relationship with
6 him?

7 A. I did. He had asked for my number, my telephone
8 number because he was going to be released, or at least
9 released for periods of time prior to his being fully
10 released.

11 I gave him my telephone number at work.
12 He called me. I remember meeting him then, and then I
13 would meet him at other times as well when he would be
14 released for various periods of time in the fall of
15 1983.

16 Q. Did you finally become engaged to Mr. Jones?

17 A. Yes, I did. I don't remember exactly when I
18 became engaged. But I know that in January of 1984 I
19 flew home to Maine to tell my parents that I was thinking
20 of getting engaged, and they were supportive. I told
21 him -- told my parents about Jim, about the fact he had
22 been in prison most his life. But they were still
23 supportive.

24 I remember my mother gave me a diamond
25 ring she had had since she had been a child. And I wore

1 that ring as an engagement ring starting in January of
2 1984.

3 Q. I believe the record shows that James was released
4 in Chicago from prison in late December of 1983.

5 Did you help him upon his release?

6 A. Yes, I did.

7 Q. Explain that, please.

8 A. I helped him find an apartment. I paid the
9 security deposit, first month's rent, whatever else was
10 required for that apartment. It was on the north side of
11 Chicago.

12 I helped him with clothing. I remember --
13 I helped him buy clothing. I think it was the fall of
14 '83, I helped him get a driver's license. I didn't have
15 a car myself at the time. But I got a friend to loan me
16 a car so he could practice driving and then take the
17 Illinois driving test, which he passed.

18 I basically think I had a pretty big role
19 in his life almost on a daily basis, just helping him
20 with whatever things needed to be done.

21 Q. Now, as I understand it James moved into an
22 apartment. You helped him move in to that apartment.

23 Was there an incident that occurred at
24 that apartment involving graffiti or something like
25 that?

1 A. Yes. I am not sure exactly when but I think it
2 might have been maybe in the late spring of '84 there
3 appeared -- his apartment building was in basically a
4 white neighborhood. I think probably most of the tenants
5 were white.

6 It was graffiti that went up in the lobby
7 of that building, and I don't remember exactly what the
8 graffiti said but it used the N word. I think it was --
9 whatever it was it was something indicating that he
10 should leave.

11 The graffiti stayed on the wall for a
12 couple days. I remember calling the landlord to complain
13 to say that that graffiti needed to be removed
14 immediately.

15 But I do remember that that was something
16 that was very troubling to Jim.

17 Q. Did he later move out of that apartment?

18 A. He later moved out of that apartment and he moved
19 into an apartment on Winchester, which was where I had
20 lived in this building. He moved into an apartment, I
21 think on the first floor.

22 He helped -- the landlady was a Polish
23 woman who really appreciated his help. She had a back
24 yard that the ground was really kind of rough and he
25 helped her prepare that yard to be resodded.

1 Q. We are going to go ahead in time and then we will
2 come back to fill in some things.

3 When did your engagement break up with
4 Jim?

5 A. It was toward the end of August of 1984. We
6 planned to get married in October of '84. I was at the
7 point of making preparations for the wedding. I already
8 had the invitations printed.

9 I had two friends from work, two
10 African-American women that met with me and with Jim to
11 help plan the reception. I don't remember exactly what
12 Jim said or did during that meeting but it led those two
13 women to tell me there is something wrong with him,
14 meaning there was something seriously psychologically
15 wrong with Jim.

16 The only thing I can remember is that
17 after they had met with him and I think they were still
18 in the apartment, I remember seeing Jim staring out of a
19 bay window in the apartment. That is the only memory I
20 have of that.

21 When they came to me and told me that they
22 really felt there was something wrong with him, I felt I
23 had to take it seriously. I think it helped that they
24 were both African-American women because I couldn't write
25 it off as coming out of racist sentiment. And it did

1 cause me to pause and step back and realized that
2 although I believe that love can heal all wounds that
3 marrying Jim was going to be taking on too great a
4 burden, involving too much self-sacrifice and that it
5 would be better if I didn't marry him.

6 I went to a psychologist and talked with
7 him about this. Because this was a very difficult
8 decision for me. I was concerned about how Jim would
9 take this because I knew he had had so many difficulties
10 in his life.

11 So, I had a meeting with him and the
12 psychologist. It was at the meeting that I told him that
13 I had come to this conclusion. I don't remember what
14 really happened at that meeting but I don't think that he
15 had any major reaction to it, or major adverse reaction.

16 I remember afterwards we went together
17 back to his apartment and talked about it some more, and
18 we still maintained a relationship after that.

19 I think before that, in that time, at the
20 end of August, '84, I think I had seen him probably on
21 almost a daily basis. After that, I think I saw him much
22 less on maybe once or twice a week basis.

23 But in October -- both he and I have
24 birthdays in October. We exchanged birthday gifts. I
25 remember he bought me an electric blanket which is

1 something I wanted. And for Christmas in December, '84,
2 I remember he gave me some mittens I saw at Marshall
3 Fields, which is a department store, very nice department
4 store in downtown Chicago. He got these mittens for me
5 for Christmas.

6 Q. What did Jim tell you about himself, his
7 background?

8 MR. BAKER: I object to that as hearsay.

9 THE COURT: Mr. MacLean.

10 MR. MACLEAN: Your Honor, we are trying to
11 understand Jim Jones in the context of a sentencing
12 hearing. This witness would be a witness at a sentencing
13 hearing. These are the kind of things she would talk
14 about at a sentencing hearing.

15 I think it is important that the Court
16 hear this because I think the Court needs to hear what
17 would be presented at a sentencing hearing in making a
18 decision in this case.

19 THE COURT: It is hearsay. I am going to
20 exclude it, but I will let you ask the questions and
21 build your record.

22 MR. MACLEAN: Thank you.

23 Q. What did Jim tell you about himself?

24 A. I remember that he had a brother and a sister both
25 younger than he; that his mother was part Cherokee; that

1 his father was a career military person; that his father
2 had beaten him horribly with a leather strap; that they
3 had moved frequently from military base to military base
4 while he was growing up.

5 He told me that he had been in the Army
6 and that the day he was discharged that he had gotten
7 into an altercation on the military base which led to
8 incarceration in a federal facility, and that while he
9 was in that federal facility that he had been raped.

10 I remember he first described the rape to
11 me in the third person. He did that on a Saturday in
12 December of 1983. I remember that because I had taken
13 the LSAC test in December of '83 and it was after I had
14 taken the test -- it was at Northwestern University --
15 and that he met me after I got out of taking the test.

16 It was very cold that day and he told me
17 about this, as I say, in the third person, telling me
18 about it as something that had happened to a young man in
19 prison.

20 But I could tell by the amount of feeling,
21 amount of detail that it was really something that had
22 happened to him.

23 And later he did admit that it was
24 something that had happened to him and not to some other
25 person.

1 When he described this, he did describe
2 that after the rape had taken place that he had gone to
3 confront the ringleader and that during that time he had
4 killed that person, that individual, and that meant that
5 he ended up being incarcerated in a federal institution
6 for a lot longer.

7 He told me of the various federal
8 institutions he had been in. I remember a Lompac. There
9 were others. I remember him telling me about those.

10 He also told me that when he was in a
11 federal facility in Colorado that he had walked away from
12 some program and so he basically was an escapee and that
13 he had gone to live with native Americans in the Dakotas.
14 I don't remember if it was North or South Dakota.

15 While he was there, that he had witnessed
16 a killing. And because of that, he had been a witness
17 for the federal government and that he had been put in
18 solitary for his own protection, and he went from there I
19 think to MCC in Chicago.

20 Q. Did he have any kind of relationship with any
21 members of his family while you knew him?

22 A. When I first knew him, he had absolutely no
23 contact with anyone in his family for decades. It really
24 struck me that he was sort of alone in the universe
25 without family ties.

1 Because I worked for the Social Security
2 Administration, I knew the procedures that one follows to
3 try to locate family members that one has been apart
4 from. I told him that I could do this, we could perhaps
5 locate his family.

6 I helped him basically -- I drafted the
7 two letters you need to write to do that. One, you write
8 a letter to the Social Security Administration laying out
9 all the facts that you know about these other relatives,
10 birth dates, where they lived, where they worked, that
11 sort of thing. And then another letter addressed to his
12 brother Mark, because I thought it probably would be
13 easier to locate Mark since men usually don't change
14 their last names, where as his sister might have.

15 In that letter which must have been
16 written in the spring of '84, letter to Mark, I was
17 writing a letter for Jim to have Jim sign, and in that
18 letter it said that he had met a woman that he was going
19 to get married to in October and he was hoping to be able
20 to reestablish his family contacts before that time.

21 But it wasn't until sometime in the fall
22 of '84, maybe November, when he called me up. He was
23 very excited because his brother Mark had called him.
24 And then he went I think by bus down to see his brother
25 Mark. And then he came back. I think he went down in

1 December of '84 and then he came back from that visit
2 back to Chicago and I think he very soon after decided he
3 wanted to go back to be with his brother. I think his
4 brother lived in Tennessee.

5 He needed the bus fare to go back there.
6 He didn't have very much money. I remember I didn't have
7 very much money at the time but I scrambled to find
8 enough money for the bus ticket. I remember actually
9 finding pennies and counting out pennies.

10 The last time I saw him was in January of
11 '85 when he got on the bus that second time.

12 Q. Was he employed in 1984?

13 A. Yes, he was.

14 Q. Who was he employed by?

15 A. I think it was a company called Star-something.

16 Q. Star Systems?

17 A. Star Systems. There was a man -- owned by a man
18 named Walt that had been a prisoner and who knew that
19 people who had been incarcerated, one of the skills that
20 they have is cleaning. Evidently that is one of the
21 things that one learns how to do in prison.

22 And he also just knew these people would
23 be good workers. He hired Jim to work for him. Jim
24 worked very hard. He became -- quickly became a
25 leader.

1 I remember one of the things that he did
2 to help the young people in Cabrini, he would give them
3 opportunities. They could work under his supervision
4 when they went out to residential homes in the Chicago
5 suburbs and did house cleaning.

6 I remember going out with them once
7 because the team was short a person. I was really
8 overwhelmed by how much attention to detail, how much
9 hard work it was and how good he was at it.

10 I also had gone out with him once when he
11 did the house cleaning during the day. In the evenings,
12 he cleaned big office buildings, and I remember there was
13 also a big nursing home facility. I remember going with
14 him one night. I didn't work but I just went with him
15 while he was cleaning a large kitchen area of this
16 nursing home facility.

17 Again, I was very impressed with how good
18 he was at his work, how much care he took, and his boss
19 put a lot of faith in Jim. His boss let Jim use his own
20 personal vehicle and also let him drive the company van
21 so he could easily get back and forth to work at various
22 places.

23 Because he was working such long hours, I
24 remember there was one time which he was coming back to
25 his apartment late at night and he was driving his

1 employer's vehicle, his employers car. Because he was so
2 tired, he fell to sleep at the wheel and crashed the
3 vehicle.

4 But the employer still had just an
5 enormous amount of faith in him and really -- I think Jim
6 and Walt were very close.

7 Q. Did Jim become a leader of a team in this
8 company?

9 A. Yes.

10 Q. Did Jim become involved in the work of the
11 Fellowship of Friends?

12 A. Yes, he did.

13 Q. Describe that to the Court.

14 A. I remember he helped out with some of our
15 recreational programs. He related very well with the
16 young people. They really looked up to him as a role
17 model.

18 He again used his gift for singing during
19 some of our programs. He also gave his own Christian
20 testimony. I can't remember other things, but basically
21 he helped out with the program in Cabrini.

22 Q. How much time and effort did he put into that
23 program?

24 A. I think probably at lease six or eight hours a
25 week doing that.

1 Q. Okay.

2 A. In addition to the long hours he was putting in
3 working for Star Systems.

4 Q. And then did he involve the kids in Cabrini-Green
5 with Star System?

6 A. Yes. He helped them to have job opportunities by
7 hiring them on some of his work teams.

8 Q. Describe Jim's personal appearance and how he kept
9 himself?

10 A. He was always impeccably well-groomed. His
11 clothing was always very neatly pressed. He really
12 always looked very dignified.

13 I remember he had some wire rim glasses
14 that made him look very preppie. He is strikingly
15 attractive, strikingly beautiful and always, always
16 well-groomed.

17 Q. How did he keep his apartment?

18 A. Very, very, very neat. I took that as something
19 coming from his sort of military upbringing. But
20 extraordinarily neat.

21 Q. Except for you and his boss Walter, did he have
22 any other friends or people he hung around with?

23 A. No.

24 Q. During this time when you knew Jim, did he get in
25 trouble?

1 A. Yes. Sometime during the fall of 1983, this is
2 before he was fully released from the MCC, he and I were
3 supposed to meet at a McDonald's. I waited there. It
4 was like two hours and he didn't show up. I was very,
5 very worried.

6 Then the manager of McDonald's came to me
7 and asked me if I was Sarah Roberts. I said yes. I took
8 the phone call. It was Jim calling me from the Cook
9 County Jail. He had been arrested for shoplifting. He
10 asked that I post bail.

11 I gathered together the money and went
12 down to Cook County Jail and posted that bail. It turned
13 out that he had taken shaving lotion or shaving cream and
14 one or two other toiletry articles from a Walgreens
15 Drugstore in Chicago.

16 I remember being very angry with him about
17 this. I remember him saying something to me that did
18 make me angry. That was that -- throwing back to me that
19 I had said during a week earlier that money did not grow
20 on trees. I don't know, I must have said that in the
21 context of I can't give you tons of money because I just
22 don't have it.

23 To me, that made me angry and told him so.
24 It was to me sort of a childish reaction to say that back
25 to me.

1 But I do remember that he did turn that
2 experience into something that was of some help to the
3 young people in Cabrini-Green. I remember him testifying
4 in church about this, about how easy it is to fall off
5 the track but how important it was to get back on and to
6 do what one is supposed to do. I think it was very
7 moving.

8 Q. That incident occurred while he was at MCC before
9 being released?

10 A. Right.

11 Q. That occurred before getting his job at Star
12 System?

13 A. Yes, that's correct. Sometime during the fall of
14 '83.

15 Q. Was there an incident where you suspected he
16 smoked marijuana?

17 A. There was only once. One night he came to the
18 apartment where I was staying -- I think for supper --
19 and I could smell marijuana. It made me very angry. I
20 confronted him about it.

21 He said that he had walked through a crowd
22 of people, that perhaps that is how the marijuana smell
23 came.

24 I didn't believe him. But I think that
25 was the only time that I knew him that I felt he was not

1 honest with me. Other than that, I really believe he was
2 honest and sincere. But that was one time when I don't
3 think he was telling the truth.

4 I did not ever see any other time that
5 would indicate any kind of drug use.

6 Q. So, other than that one incident with the
7 marijuana smell and the shoplifting incident during the
8 period you knew him from late 1983 until he left for
9 Tennessee in early 1985, were there any other occasions
10 you are aware of that he got in trouble or did anything
11 wrong?

12 A. No.

13 Q. Now, did you travel with Jim to Maine to meet your
14 family?

15 A. Yes. I think we rented a car and went to Maine in
16 the spring of '84. We drove to Maine.

17 He was very helpful to my parents and my
18 youngest brother. I remember he helped with plumbing
19 repairs that needed to be done. He bonded very well with
20 my family. They really thought very highly of him.

21 And I remember my youngest brother saying
22 to me, don't mess this up. He is really good, or
23 something to that effect.

24 I remember we went out to a lake with my
25 family. I think we might have gone fishing. I can't

1 remember exactly. But I sort of remember him sitting on
2 the ledge. I think he had a blue Fellowship of Friends
3 jacket on. We had the jackets from the Fellowship of
4 Friends program in Cabrini.

5 I remember he was very happy, in Maine
6 particularly. I remember when we were driving home, as
7 we were driving on the highway still in Maine but
8 leaving, I remember seeing tears quietly roll down his
9 checks as he was driving. I think it made him sad to
10 leave Maine.

11 Q. Now, you mentioned the circumstances leading up to
12 the break up of the engagement in August of '84.

13 Was there a prior occasion or incident
14 when you became concerned about his mental stability?

15 A. Yes. It was one time -- which I think this was
16 probably maybe February of '84. I remember there was
17 still snow on the ground. I think we had been at his
18 apartment and then we had gotten in the van and were
19 driving somewhere. Maybe he was taking me back home.

20 And he just totally lost control of
21 himself. I don't remember what he actually did or said
22 but I was convinced we were both going to die, that the
23 van was going to smash in to traffic or at the very least
24 at a very high rate of speed in to parked cars.

25 I remember -- I am not sure why I didn't

1 have my seat belt on -- but throwing myself in the back
2 of the van trying to hold on behind the seat, hoping that
3 might help me live through this.

4 We did miraculously smash into some kind
5 of a bank of ground that was covered with snow. So, we
6 didn't die. I guess there wasn't that much damage to the
7 vehicle.

8 But it really shook me up. I remember
9 just being really worried about that. I don't think that
10 he ever would have done anything to hurt me
11 intentionally.

12 But that was a very terrifying thing to
13 me, the fact that he could just lose control of himself
14 and that it could end up being deadly.

15 Q. Did you ever feel threatened by him in the sense
16 he might do something deliberately toward you?

17 A. No. Absolutely not.

18 Q. What were his feelings toward children?

19 A. He had a very, very, very strong feeling of
20 empathy, affection for children. He felt it was very
21 important to protect children, to help them.

22 I think that came out very much in his
23 relationship with the young people in the Fellowship of
24 Friends program. It was something that was very, very
25 strong; that he had a very, very strong empathy for

1 children that they should be protected.

2 Q. Did he ever express any feelings toward animals?

3 A. Yes. I don't remember what the context was but I
4 remember sort of coming to the conclusion of various
5 things he had said that his feelings toward animals was
6 very extreme, that he identified with animals, that he
7 really highly valued animals.

8 It just seemed very extreme to me. It was
9 something that I had sort of attributed to having had so
10 many horrific things happen in his life as a result of
11 people.

12 Q. While you knew him in Chicago, was he trying to
13 get his life together?

14 A. Yes.

15 Q. What was it about James Jones that you found
16 attractive or appealing? You mentioned the singing.

17 Beyond that, tell us what you found about
18 him as attractive or appealing?

19 A. He was a very caring person. Again, I can only
20 speak from when I knew him in 1984, '83. He was very
21 sincere. He seemed to have a very sincere Christian,
22 religious belief that I shared. He was very hard
23 working. Just extraordinarily polite, genial, full of
24 respect for other people.

25 I just really thought of him as somebody

1 who had a really good heart, somebody who had gone
2 through horrific experiences but who was working very,
3 very hard to overcome those horrific experiences, and
4 that he was really going to make something really good of
5 his life.

6 I remember in the fall of '84, he
7 registered as a student at Loop College which is one of
8 the Chicago city college divisions. I remember how
9 excited and proud he was of taking the classes and
10 getting passing grades.

11 He is just somebody filled with a lot of
12 dignity.

13 Q. Was he loyal and faithful?

14 A. Yes. I would say he was extremely loyal and
15 faithful both in his job and to the Fellowship of Friends
16 and to me.

17 MR. MACLEAN: Your Honor, just one moment.

18 THE COURT: All right.

19 Q. I just have two questions for you.

20 Did you see during the time you knew
21 James Jones, did you see any evidence or signs he was
22 related to any kind of gang activities or drug selling
23 activity?

24 A. Absolutely not. Those were things that he found
25 very abhorrent, that it was something we were all working

1 hard to fight as a part of the Fellowship of Friends.

2 It is something that he personally found
3 abhorrent.

4 Q. Before his trial in 1987 in this case, had you
5 ever been contacted by any of his attorneys or anybody
6 else?

7 I am not talking about 1983. I am talking
8 about 1987.

9 A. No.

10 THE COURT: Mr. Baker.

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EXAMINATION OF SARAH ROBERTS WALTON

BY MR. BAKER:

Q. Ms. Walton, you feared James Jones, didn't you?

A. I had no reason to fear him.

Q. You were really afraid of him?

A. I wasn't afraid of him. When I broke off the engagement, I was afraid it would just be a very hurtful thing to him. But he -- I didn't fear he would react in doing anything to hurt me. Certainly not hurt me intentionally.

As I said with the van incident, that was something that did make me afraid but it was more being afraid that he would loose control of himself.

Q. Do you recall talking to Dr. Diana McCoy on the telephone last year?

A. Yes.

Q. Do you recall telling her you were really afraid of Mr. Jones and you wanted to make it harder for him to find you?

A. I think I wanted to get on with my life. I wanted to sort of end that part of my life and go on with my life. I didn't want -- I don't know.

I think I always had sort of feelings of guilt that in some way when I put him on the bus in January of '85 that I had sort of handed him over to

1 somebody else to watch over and take care of and that I
2 had wanted to then focus on myself.

3 I didn't want him to contact me again. I
4 think the -- I was really afraid of sort of getting in a
5 situation that I didn't want to be in. I wanted not to
6 have contact with him further.

7 Q. And that was because, in part, you were afraid of
8 him?

9 A. Well, I knew he was very damaged as a person, that
10 he had undergone so much in his childhood, so much as a
11 result of racism, so much as a result of life in the
12 prison that he was very damaged.

13 Q. That you feared him. You personally feared Mr.
14 Jones?

15 A. Well, I had a fear of what he could do.

16 Q. You thought he was a manipulative person?

17 A. I thought he was manipulative and that was a
18 survival skill he had learned while he was in prison or
19 other parts of his life, that the only way to survive
20 really was being able to be manipulative.

21 Q. In fact, you had concerns that at times he was
22 manipulating you?

23 A. Looking back, I definitely felt that way. While I
24 was with him, I don't believe I felt that.

25 But looking back, I did feel that that had

1 been the case.

2 Q. You broke up with James Jones, correct?

3 A. That's correct.

4 Q. And ended the engagement?

5 A. Yes.

6 Q. That was on advice of your psychologist,
7 correct?

8 A. Well, it was a decision that I had come to, that I
9 then had gone to the psychologist to talk with him about
10 my feelings about it.

11 But it was a decision that I had made or
12 come to after having spoken with my two friends.

13 Q. You talked about one incident of violence when he
14 was driving out of control.

15 He was upset because he was experiencing
16 sexual frustration, in your opinion?

17 A. That is what I thought was going on. I don't know
18 for sure. That is what I thought was causing it.

19 Q. You feared that he was going to intentionally
20 crash the car?

21 A. No. I didn't think it was intentional.

22 Q. So, you did not tell Diana McCoy you thought he
23 might intentionally try to crash?

24 A. I think what I was explaining to her was I didn't
25 think that he was intentionally trying to hurt me but

1 that it could perhaps be sort of an act of
2 self-destruction in which I would be sort of a bystander
3 who could get hurt, that that was another theory I had.
4 But --

5 Q. You say he eventually calmed down after he stopped
6 the car?

7 A. Uh-huh.

8 Q. And you remained upset about that for a good while
9 afterwards?

10 A. That's correct.

11 Q. Now, at times you also feared he may stalk you,
12 correct?

13 A. Yes.

14 Q. You talked about that he was not -- he was opposed
15 to drug dealers and drugs.

16 You mentioned that, correct?

17 A. Yes.

18 Q. Of course, that is inconsistent with him smelling
19 like marijuana?

20 A. That's correct.

21 Q. You felt he was being deceptive about that?

22 A. Yes.

23 Q. Did he ever tell you he used marijuana for
24 religious reasons?

25 A. Yes.

1 Q. You at the same time said you had no idea he would
2 use drugs?

3 A. Yes. I had no knowledge of him using drugs at all
4 during the time I knew him.

5 But I knew he had talked about in the
6 past, I think particularly when he was with native
7 Americans smoking marijuana for some kind of spiritual
8 purpose.

9 Q. So, you did have knowledge he had used drugs in
10 the past.

11 It was just during the time you knew him
12 you believed he was not using drugs?

13 A. That's correct.

14 Q. And you also described him as a leader?

15 A. Yes.

16 Q. As a person who would lead children in discussions
17 at the church?

18 A. He gave his testimony in church.

19 I don't remember him leading children in
20 discussions as a discussion leader.

21 I do think one on one, he had a good
22 relationship with children and giving testimony in church
23 in front of all of the those gathered in the church was
24 very moving.

25 Q. Now, at the time you knew James Jones, you did not

1 believe he might be mentally ill? That never entered
2 your mind?

3 A. No, it didn't.

4 Q. In fact, these women you talked to in Chicago
5 didn't actually tell you they thought he was mentally
6 ill, they thought this man wasn't right?

7 A. They said there is something wrong with him.
8 Those are the words I remember them saying.

9 And that what they meant or what I
10 interpreted what they meant, or further explanation,
11 it was that there was something wrong with him
12 mentally.

13 Q. That is just your interpretation about it?

14 A. And I did think that perhaps he really had been
15 way too damaged.

16 Q. You talked about his attending this Loop
17 College.

18 He never completed that college, did
19 he?

20 A. That's correct.

21 Q. He left Chicago?

22 A. Yes.

23 Q. And when he left, you were relieved that he
24 left?

25 A. I was. I felt guilty about that but that is, or

1 was my feeling, a feeling of relief.

2 Somebody else was going to carry the
3 burden of --

4 Q. But you described Mr. Jones, in your opinion, he
5 had a good heart?

6 A. Yes.

7 Q. Now, were you aware when he was in the Dakotas
8 that his Indian name was No Heart?

9 A. If I was aware of that, I have forgotten that.

10 MR. BAKER: That is all, Your Honor.

11 THE COURT: Mr. MacLean.

12 MR. MACLEAN: Your Honor, no further
13 questions.

14 THE COURT: All right. Ms. Walton, thank
15 you for traveling from Maine to Tennessee and I hope you
16 have a safe trip back. You are excused.

17 A. Thank you.

18 THE COURT: Good luck in your legal
19 career.

20 A. Thank you.

21 MR. MACLEAN: I would like to call Ms.
22 Susi Bynum, please.

23 THE COURT: Before we do that, let's take
24 a five minute break

25 (Whereupon, the Court was in recess.)

1 THE COURT: Who is our next witness?

2 MR. MACLEAN: Your Honor, Susi Bynum.

3 THE COURT: Welcome, Ms. Bynum. Step
4 forward, please.

5 Raise your right hand.

6 (Whereupon, the witness was duly sworn.)

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EXAMINATION OF SUSI BYNUM

BY MR. MACLEAN:

Q. Ms. Bynum, please state your name.

A. My name is Susi Mae Bynum. I am still legally Jones.

Q. You are still legally married to James Jones?

A. Yes.

Q. Where do you live?

A. 40 South Morrison Street, Memphis, Tennessee.

Q. Speak up a little bit, please.

A. Okay.

THE COURT: I ask the security officer to try to work with the microphone and see if we can catch the sound a little better.

A. 40 South Morrison Street, Number five, Memphis, Tennessee, 38104

Q. Where do you work?

A. Midtown Mental Health Center in Memphis.

Q. You have a daughter?

A. Oh, yes. She is five.

Q. Five years old?

A. Jasmine.

Q. Do you remember when you met James Jones?

A. Yes.

Q. Do you remember about when it was?

1 A. It was in the summer or the spring. It was warm.

2 Q. Of 1984 or 1985?

3 A. 1985.

4 Q. And how did you meet James?

5 A. I met him through a friend, brought him to the
6 house.

7 Q. And give the Court sort of the history of your
8 relationship with James from the time you met him until
9 the time you got married?

10 A. Tell the Court?

11 Q. Yes, please.

12 A. Well, when I first met James, he opened up his
13 mouth, it was like thunder from heaven. Well, I was
14 fascinated with James when I met him. He was different,
15 just different from any man I had ever met. He had a
16 strong voice, he wanted to do something for the world. I
17 was intrigued by that.

18 He wanted -- I thought he could be a
19 fantastic minister and just help people. I was into this
20 helping people thing and he was into this helping people
21 thing. So, I was just real fascinated by him.

22 When I say he was different, I mean he was
23 different. He could do things that normal people
24 couldn't do. He could talk to animals. I know it
25 sounds -- he could really talk. Birds would literally

1 come and land on his hand and they never did me like
2 that. He could -- squirrels and things would come around
3 close. He could make sounds. I mean, I was fascinated
4 by him.

5 Q. When you first met him, you became friends with
6 him and then eventually you formed a relationship with
7 him, correct?

8 A. Yes.

9 Q. When did you marry him? Do you remember when it
10 was?

11 A. December, '85.

12 Q. While you were together, did you know Devalle
13 Miller and Karen Miller?

14 A. I didn't know them at first. I met them, yes,
15 while we were together.

16 Q. When you knew James, where was he employed?

17 A. At the Baptist Publishing Board.

18 Q. Who was his boss?

19 A. Allen Boyd.

20 Q. Where was Devalle Miller employed?

21 A. Baptist Publishing Board.

22 Q. Did you and Karen Miller become close friends?

23 A. Yes.

24 Q. And the four of you, you, James and Devalle and
25 Karen would spend time together?

1 A. Right.

2 Q. From the time you met James until you got serious
3 and became a serious relationship, what period of time
4 was that, do you recall?

5 A. It was short. We saw each other -- from the time
6 I met him, I probably saw him every day. Maybe three,
7 four months, three months.

8 Q. Did you and he move in together at some point?

9 A. Yes.

10 Q. When was that?

11 A. It was around the fall. It wasn't cold, cold but
12 it was warm. Around the fall.

13 Q. Now, how would you describe James' work habits
14 during the period you knew him?

15 A. His work habits?

16 Q. Yes.

17 A. He was a diligent worker.

18 Q. How would you describe his personal appearance?

19 A. He likes to be neat. He likes his shoes to be
20 shined, and similar to my brother. Liked his shoes to be
21 shined and face to be cleaned, bed to be made up when he
22 gets up out of it. A neat person.

23 About like you.

24 MR. MACLEAN: Please don't -- strike that
25 from the record.

1 THE COURT: I will take that comparison.

2 Q. When you first became close to him, did he talk
3 about his background, his family, his childhood?

4 A. He gave me little pieces at a time. When I would
5 ask, he would give me information and the more -- the
6 longer I got to know him the more information I would
7 get.

8 Yes, he told me several things about his
9 background, things that I kind of felt but really didn't
10 know.

11 Every time I saw him do something that was
12 unusual, I would seek an explanation. Most of the time
13 it would come, the explanation would go back to something
14 that happened in the past or childhood or something like
15 that.

16 Q. Now, when you married him, what was your feeling
17 toward him?

18 Did you think it needed help, or what was
19 your attitude toward him at the time you married him?

20 A. My attitude?

21 Q. How did I fell toward him?

22 A. I loved him. Okay. He has everybody -- nobody is
23 perfect. He has a few problems and we are going to get
24 married and I am going to help him work on these problems
25 and we are going to become one.

1 I was kind of like raised that marriage is
2 a bonding thing for life and you stuck -- stick together
3 and work these things out. And we could work on the
4 things that wasn't up to par.

5 I guess I am going to have to say this, at
6 that particular time I thought maybe I could help
7 changing him. Changing him --

8 Q. What way?

9 A. Change him. I know better than that though.

10 Q. Pardon me?

11 A. I don't do relationships like that anymore. That
12 is something else. And the way to help him to talk about
13 things that is bothering him, that upsets him or seek
14 some help, you know, from somebody that can help us talk
15 about things that is causing conflict or problems in the
16 relationship.

17 See, I thought like this. Can I just say
18 this and I will have to just break it down? There is no
19 other way to say it.

20 When I was little my mama always said,
21 Susi, things, emotional things that cause you problems,
22 you don't hide them, don't stick them in the closet,
23 don't let them ride your back. You discuss them. The
24 more you discuss things the less dead cats you have to
25 carry around in secret.

1 My main thing was to take what I was
2 taught and put it on James and let him be open and free
3 the way I was taught. I know it sounds crazy.

4 Q. Now, describe to the Court when you and James were
5 living together what your typical day would be like.

6 A. We get up and get ready and go to work and maybe
7 talk in the morning, talk in the evening, come home from
8 work. We would fix -- James was a good helper, too, you
9 know, like around the house.

10 You know, like I notice my dad never did
11 anything as far as washing, cooking and cleaning and
12 stuff. James would wash, cook, you know. He would
13 volunteer to do anything that needed to be done.

14 Q. Did you and James socialize with the Millers?

15 A. All the time.

16 Q. When you socialized with the Millers, did you
17 smoke marijuana or drink beer, or what would you do?

18 A. James couldn't drink. Okay. I was the beer
19 drinker. I drink, the Miller's drink. James wasn't a
20 drinker. James wasn't -- he wasn't into drinking and
21 drugging and that kind of stuff.

22 I think James was focused on -- I think he
23 was above us. He was more focused on the world, you
24 know. Where we had these little biddy folks on just the
25 community but he was like focused on the world, a world

1 thing.

2 And he was a loyal person.

3 Q. Pardon me? A loyal --

4 A. Loyal. Once he became your friend, once he found
5 friendship in you or something in you that he liked, he
6 was loyal to you.

7 I don't think he realized that everybody
8 in the world was not loyal in return.

9 Q. All right. You told me something about his sense
10 of loneliness.

11 Can you tell the Court what you told me?

12 A. He had periods when he --

13 THE COURT: Speak up a little bit,
14 please.

15 A. Okay.

16 THE COURT: You might need to scoot closer
17 to the microphone.

18 A. No matter how hard I tried, he had periods of
19 loneliness where he was -- he appeared to be isolated
20 from his surroundings.

21 When I tried to bring it out or discuss it
22 or talk about it, he would give me the impression out of
23 all the things in the world loneliness was one thing he
24 didn't want to be, just alone by himself. I think -- my
25 opinions don't count, do they?

1 Q. They do.

2 A. Can I say opinions? I think he was afraid to be
3 alone. I mean alone without anybody or anything, just
4 alone, you know.

5 Do you understand what I am talking about,
6 alone?

7 Q. Were there times you observed him gazing at the
8 wall?

9 A. At the wall, at the floor, at objects.

10 Q. Can you demonstrate to the court what it would
11 look like.

12 Be like James when he would stare or gaze
13 at something.

14 A. I am not a good actor now.

15 Q. Go ahead and try.

16 A. It depends on the situations. A lot of times in
17 the afternoons, if I am doing something, I would cash
18 him. Okay. The TV would be on but the TV wouldn't be of
19 importance to him. He would be -- I think probably his
20 favorite one was the ceiling. It was like something was
21 up there. He would be sitting there just like this with
22 that rock, that same kind of rock he would have when he
23 would get upset and pound his head.

24 Q. Tell the Court about pounding his head.

25 A. He would have instances where he would just pound

1 his head to the wall.

2 Can I show you?

3 Q. Yes.

4 A. Just, you know, and half the time nothing would be
5 going wrong. Things would be -- sometimes it would be
6 okay. I would notice peace, and everything was all right
7 but he would stand up in the corner and just -- I say,
8 why are you doing that? Why are you doing that?

9 He would just pound his head up against
10 the wall.

11 I got to say this. By the time he got to
12 all this and the more I got to know James, I started
13 saying, you need some help. I didn't say you, I said we
14 need some help. Like I said, we need some help.

15 I didn't know what kind of help we needed.
16 I knew we needed some help. But, he wouldn't go along
17 with the help thing, you know. I told the people that
18 was around him that we needed help.

19 Q. Were there occasions when James would start
20 talking to himself?

21 A. Yes.

22 Q. What was that like?

23 A. Late at night and in the morning.

24 Q. Describe how that would happen and what that was
25 like.

1 A. Well, it wouldn't be like he is talking to
2 himself. I talk to myself and say, Susi, you need to go
3 ahead and get the baby's lunch fixed. You know, Susi --
4 that is talking to myself. Susi would be talking to
5 someone. I assume God or -- God. Talking to God.

6 Q. Show the Court what it looked like.

7 A. But God would be talking back.

8 Q. Show the Court what that was like.

9 A. He would sit there and he would just talk like I
10 am talking to this man here. I am like this.

11 Don't get me wrong, I wasn't hearing no
12 response. I didn't hear any responses. But it was
13 conversations. I was saying, who are you talking to?

14 Q. What was his sleep like?

15 A. Well, is sleep was -- there was times when I don't
16 know if he really slept. He would be woke when I went to
17 sleep and woke when he woke up. He would move all night
18 long.

19 A good example would be, probably, my
20 brother was in the Marines and some kind of way he got
21 shell shocked or whatever they call it. He motioned,
22 ticks and twix.

23 If you walk in the room, you know, early
24 in the morning when it is close for him to get up, he
25 jumps up but he jumps up like who is there, should I run

1 out on the field or something. It is time to get up and
2 get in line. He is a real agitated sleeper, not
3 peaceful.

4 Q. Did James ever -- was he ever self-destructive, do
5 anything to hurt himself besides the head banging?

6 A. Well, he hit the wall one time and hit the window
7 one time and cut his hand. So, that hurt him.

8 Q. Did you ever feel personally threatened by him?

9 A. Threatened?

10 Q. Yes.

11 A. Threatened by James?

12 Q. Yes.

13 A. No. No. He never said anything like I am going
14 to hurt you or, you know, nothing like that. Probably
15 felt more threatened by my daddy.

16 No, no. I never felt threatened by James.
17 I never feared him or anything. I mean, we had
18 discussions. We totally would disagree about things a
19 lot of times, you know. He would just be totally
20 disagreeing on it. I would be just totally disagreeing
21 on it.

22 He would get pissed off and I would get
23 pissed off but I never feared he would hit me or nothing
24 like that.

25 Q. What was James --

1 A. Believe me, I can make you mad.

2 Q. What was James' feelings toward his children?

3 A. Oh, it is hard to explain. I get emotional when I
4 think about children myself. I love kids. But I think
5 James probably loved kids a whole lot more than I do.
6 One child in particular, I would just die for.

7 But I think the situation being reversed
8 and put James in the slot, he would just die for all of
9 them. I kind of feel like the world that he wanted so
10 much to help and to change wasn't us grown up people, you
11 know what I am saying.

12 I just kind of feel that world was the
13 kids' world, the children's world. The little ones.

14 Q. What were his spiritual views and what did he talk
15 about?

16 A. He talked about God. I thought -- I thought he
17 would make an excellent minister, just around the world
18 just ministering, talking about God. But he wanted to be
19 close to God and I felt like in his own way he was
20 seeking to be close to God every day.

21 Q. Did he talk about the Messiah, being the Messiah
22 or --

23 MR. BAKER: I object to these hearsay
24 statements

25 A. He said we were going to have --

1 THE COURT: Excuse me a moment.

2 An objection has been made. Your
3 response.

4 MR. MACLEAN: Your Honor, again I have two
5 responses. First of all, I think this is evidence of you
6 know what James Jones is like. I think his life is on
7 trial, this is evidence of the man who is on trial whose
8 life is at stake here.

9 I think it corroborates the signs of
10 mental illness we have been talking about in this
11 proceeding.

12 THE COURT: You made reference to
13 everything but the rules of evidence.

14 MR. MACLEAN: I don't think it is hearsay.
15 I don't think she is testifying to the truth -- we are
16 not trying to bring in evidence to prove those
17 assertions.

18 We are bringing into evidence the
19 observations she had of this man, which I think are
20 relevant to this case. It is not hearsay.

21 THE COURT: Well, I am going to allow
22 the Messiah question because I don't think it goes to
23 the truth of the matter. I will watch where we go from
24 here.

25 Q. Go ahead.

1 A. James thought that we would have the coming
2 Messiah, the coming child, you know, the Jesus Christ
3 that is supposed to come back into the world, the coming
4 Messiah.

5 He thought that was part of his purpose in
6 life. He thought I was the one to have this Messiah with
7 him.

8 Q. What was James -- how did he feel about needing to
9 belong? You talked to me about that before.

10 THE COURT: Let me go back to the other
11 point. That wasn't hearsay at all. That was her
12 impressions of his thought, not what he said.

13 Go ahead.

14 A. Well, that is what he told me, we were going to
15 have the Messiah.

16 THE COURT: I understand. Just tell the
17 truth as you see it. I am not trying to confuse you. We
18 are talking about how the rules of evidence apply and
19 they are arcane. So your job is to --

20 A. Answer the question truthfully. That is what he
21 said.

22 THE COURT: Just focus on that.

23 What is your next question?

24 Q. Tell us about his sense of belonging or need to
25 belong.

1 A. Always got to belong, he needs to belong to
2 something, somebody. His first sense of belonging was, I
3 think, for a marriage and a commitment to one.

4 The Bible speaks of oneness, when you
5 become married you become one. He expressed this from
6 time to time, to death do us part thing.

7 He always said he never belonged anywhere
8 else in his life, you know.

9 MR. BAKER: We are getting into hearsay
10 now.

11 THE COURT: Sustained. Next question.

12 Q. What was his sense of loyalty?

13 A. He was loyal. If he found a friend, somebody that
14 he liked, if he connected and he trusted you, he was
15 loyal all the way.

16 Q. Do you know Allen Boyd?

17 A. He would give up his life for you.

18 Q. Do you know Allen Boyd?

19 A. Just like Jasmine.

20 Yes.

21 Q. How do you know Allen Boyd?

22 A. Well, I know I am on two sides. His wife went to
23 school with me. So, I knew her. And then I met him
24 through James.

25 Q. Tell us about that.

1 A. About Allen Boyd?

2 Q. Yes.

3 A. That was his best friend.

4 Q. Tell us more about that.

5 A. He was loyal to Allen Boyd.

6 Q. Tell us more about the relationship between James
7 and Allen Boyd.

8 A. I think when I first met James, I think the
9 relationship between Allen Boyd was real tight. He
10 thought Allen Boyd couldn't do no wrong. I better not
11 say too much against Allen Boyd or there would be an
12 argument. They were friends. I will say real good
13 friends. He was loyal to Allen. They were buddies, you
14 know.

15 Q. Did they spend a lot of time together?

16 A. A whole lot of time.

17 Q. Are you familiar with a group called the Southeast
18 Gospel Ministry?

19 A. Yes.

20 Q. Tell the Court about that.

21 A. They was like --

22 THE COURT: I am sorry. I couldn't hear
23 you.

24 A. I am trying to give them a name. A church group,
25 I guess. They called them a church. Well, a group of

1 people of all different denominations came together as a
2 church. That is one.

3 Q. Who were prominent members of that group?

4 A. There was a lot of people. In the meetings there
5 were a lot of people. There was Allen, Mitch Hollie. He
6 owned a store over there.

7 Q. William Beard?

8 A. William Beard and James. Allen, Mitch, James,
9 William. Those four were the primary members, and
10 Devalle Miller. Those were the five.

11 Q. Were there meetings that men and women would come
12 together?

13 A. Yes.

14 Q. Were there other meetings where there were just
15 the men?

16 A. Yes.

17 Q. Were you any part to the meetings with just the
18 men?

19 A. With just the men? No. One time they let me go
20 on the hiking thing. It was just the men then. Outside
21 of New York City.

22 Q. Describe that. What do you mean by the hiking
23 thing?

24 A. Physical fitness. We went somewhere in the woods.
25 Don't ask me where. I don't know where. They had this

1 long hiking trail, maybe 15 miles or something like that
2 and then everybody was running, and the person that got
3 to the point first was the winner. I won. I mean, I was
4 in better physical shape then. I played basketball and I
5 could run 15 miles then. I was a long-distance runner
6 high school and college. I beat them like they were
7 turkeys.

8 Q. They were in a fitness program?

9 A. Yes.

10 Q. Did James or Devalle ever wear military type
11 clothing?

12 A. A long time.

13 Q. Was this part of what they were doing together?

14 MR. BAKER: I object to leading.

15 THE COURT: She evidenced they wore
16 military clothing. She can testify to why she observed
17 them in the clothing.

18 Go ahead.

19 A. I am sorry. I missed the question when he said
20 something.

21 THE COURT: Restate the question, Mr.
22 MacLean.

23 Q. Why were they wearing the clothing?

24 Was this related to their group they were
25 in, or do you know?

1 A. I am not sure. I mean when we went hiking they
2 wore them, definitely. Everybody did. As a matter of
3 fact, I think they gave me some, too.

4 But I don't know.

5 THE COURT: She is not sure. Next
6 question.

7 Q. What did these meetings -- what was the topic of
8 conversation in these meetings?

9 A. The topics?

10 Q. What did they talk about?

11 MR. BAKER: Objection to hearsay, Your
12 Honor?

13 A. They talked about --

14 MR. MACLEAN: I don't think this is
15 hearsay.

16 THE COURT: She can testify she heard
17 people --

18 A. I went to the meetings.

19 THE COURT: I get to talk first.

20 A. I am sorry.

21 THE COURT: She can testify she was in the
22 meetings and what subjects were discussed. She can't
23 testify who said what to whom.

24 Q. What subjects were discussed in the meetings?

25 A. Okay. I got you. We discussed building

1 communities, building churches and schools, where we
2 could separate from the communities and things that we
3 were in so the children could be safe.

4 And some people were more interested in
5 the children and then some people were just interested in
6 having -- we discussed a lot of things.

7 Communities, safety rules for the
8 communities, schools, churches, separation from the chaos
9 until all this is in force, keeping the communities we
10 were in safe, you know, not allowing the communities that
11 we were in to be destroyed.

12 Q. Did they talk about the drugs in the communities?

13 A. Yes. They talked about everything, about the
14 communities, the churches, the schools, safety for the
15 kids.

16 Q. Have you ever been over at Allen Boyd's house
17 during this period of time?

18 A. Oh, yes.

19 Q. What did you see there?

20 A. A lot of things.

21 Q. Did you ever see any guns?

22 A. Yes, I did.

23 MR. BAKER: I object. This is leading.

24 Whatever she doesn't respond to what he
25 wants, he gives her the prompt. I object.

1 THE COURT: Overruled.

2 Q. Did you ever see guns in his house?

3 A. Yes.

4 Q. More than one?

5 A. Yes. He had a collection.

6 Q. Now, during the period of time say in the late
7 fall and winter of 1985 into the early part of 1986,
8 could you describe James' participation, or the times he
9 would leave the house and how much he was leaving the
10 house to be with Allen Boyd?

11 A. He became more and more involved. The more
12 involved he became the more I got away, you know,
13 separation.

14 He would get upset because I wouldn't go
15 to the meetings. You know, but the meetings were kind of
16 like -- I wanted to be this good wife and why didn't I go
17 to the meetings often anymore and come along, you know, I
18 was dropping off.

19 Q. Did Allen Boyd --

20 A. He was spending more times with these people, his
21 friends.

22 Q. Now, when you were married in December, what was
23 your sexual life like with James?

24 A. You are kind of personal.

25 Q. I know this is embarrassing.

1 A. You don't -- do you want me to answer that
2 question?

3 THE COURT: Yes.

4 A. It was lacking a whole lot. You know what I am
5 saying? It was in desperate need of help, and that
6 wasn't the only reason why I said we need some help.
7 Just all around help. I mean, I thought married people
8 were supposed to at least be doing it three, four times a
9 week, you know, when you first get married. I thought
10 that prior to marriage it was like that, because we
11 wasn't married. But when we got married it was still
12 like that.

13 I don't think -- I don't think James ever
14 had a climax.

15 Q. Was that a sorts of tension within the marriage?

16 A. It was tension for me. Because I was a sexually
17 active individual.

18 Q. Ms. Bynum --

19 A. I think my tension was kind of rubbing off on him,
20 too. Because I think he was beginning to feel like he
21 wasn't holding up this part of the thing, this is a part
22 of marriage also. I don't think he was holding up
23 because he wasn't trying. I think he was -- just wasn't
24 capable of producing.

25 Q. When you first met James, did he have a sense of

1 humor?

2 A. Oh, yes. Yes.

3 Q. He was fun to be around.

4 How did that -- what happened with that
5 over time?

6 A. Man, I don't know. It went out the window. The
7 closer -- every now and then it would be there. I had to
8 work real hard to get it there. But then it just sort of
9 went out the window. Just left.

10 It seemed like the more -- it was like a
11 little child, like Jasmine. Jasmine is real happy when
12 things are going along her way and she is smiling and
13 happy and laughing, you know.

14 When mama says no then she is not so happy
15 anymore, you know. So it is okay but she doesn't have a
16 real big smile or playing, kidding around anymore.

17 Q. How does that compare to James?

18 A. Sometimes in some instances James had got -- James
19 got same maturity levels of Jasmine. Seeing things
20 Jasmine does today, I look and say that was like my
21 James. That was his level of a five year old.

22 It is hard to explain. In a lot of ways
23 he was like a little child in some things, and then in
24 other things he was a little bit more advanced and a
25 little more mature.

1 In a lot of ways he was like a little
2 child.

3 Q. Now, the offense in this case occurred on February
4 17, 1986.

5 Do you recall what happened that evening?

6 A. Well, I know we were over at Karen's and them
7 house.

8 Q. What happened. Describe the sequence of events.

9 A. We was over at Karen's house. I think Karen and I
10 was cooking, fixing something, food for the children, for
11 us. We were in the kitchen.

12 They were out front watching T.V. or
13 whatever, talking. It was a normal situation. Karen and
14 I got together and they kind of got together. And then I
15 think later on they left.

16 THE COURT: Who is they?

17 A. Karen's husband and James.

18 THE COURT: All right.

19 A. Devalle.

20 Q. Then what happened?

21 A. They left and then Karen and I did what we always
22 do, talk and play with the children.

23 They came back later on that night.

24 Q. Where were you when they got back?

25 A. I was in bed.

1 Q. Did you hear what happened when they came back?
2 Could you hear them?

3 A. Did I hear them come in the door?

4 Q. Uh-huh.

5 A. James came in where I was. I said, where have you
6 been all this time? I was kind of -- he got in bed and
7 we went to sleep.

8 Q. And then what happened the next morning?

9 A. And then the next morning we got up. They went to
10 work. James and Devalle, I think, went to work.

11 Q. Now, when they got home, did James -- did you hear
12 anybody take a shower or get cleaned up at all?

13 A. Take a shower?

14 Q. Right.

15 A. No. No, there wasn't no shower taking.

16 Q. Did you see any signs of blood on James?

17 A. No. No, there wasn't any blood on any of the
18 sheets or anything like that. I didn't see any blood on
19 his clothes.

20 Q. Now, the arrest occurred two days later on
21 February 19. That was on a Wednesday.

22 On the Tuesday you said that both James
23 and Devalle went to work, is that right?

24 A. Yes. They went on Wednesday, too.

25 Q. And you went to work those days, too?

1 A. No.

2 Q. You weren't employed?

3 A. I wasn't employed then.

4 Q. But were you --

5 A. I took them. I think I remember I took them the
6 next -- those days.

7 Q. And were you outside the house on Wednesday when
8 the police came and searched the house?

9 A. Outside my house?

10 Q. Yes.

11 A. On Wednesday?

12 Q. Yes.

13 A. No, I wasn't there.

14 Q. You weren't there at the time?

15 A. No. I think I might have been over to Karen's or
16 somewhere but I wasn't at the house.

17 Q. When you got back, what did the house look like?

18 A. A wreck. Mattresses were tore up, stuff all over
19 the walls. The drawers in the kitchen, it was --
20 everything, clothes all over the floor. The bed was
21 broke down and tore down. They had cut holes in the
22 mattresses in the bed. You know, TV was on the floor
23 upside down. It was just a mess. I thought somebody had
24 broken and entered. I thought nothing nobody really
25 needs or anything.

1 Q. When did you learn James was arrested?

2 A. When I went to pick him up that afternoon from
3 work.

4 Q. That is when you learned?

5 A. Devalle came outside and he said, Susi Jones, the
6 police came and picked up James. I said, for what?

7 Q. Then what happened?

8 A. And I had been sitting out there waiting for him
9 for quite some time, you know. People were coming out,
10 and it wasn't like James. He normally be the first one
11 to come out of there as soon as the thing goes off, or
12 whatever. But he didn't come out.

13 Q. Where did you go from there?

14 A. And then Devalle got in the car. I said, what is
15 the problem? What is wrong? And he said they picked him
16 up, they picked him up. And he wasn't giving me no
17 information.

18 I said, well, we will go down here and
19 find out what is going on. It goes back to I can fix it
20 again. I can't fix it today. I said, I am going in find
21 out what is going on.

22 So, Devalle jumped in the car. I
23 dropped him off at home. No, I dropped him off at the
24 bridge close enough to his home. I got rid of him and
25 then I came downtown to the jail house to see what was

1 going on.

2 Q. What happened when you got there?

3 A. To the jail house?

4 Q. Yes.

5 A. There was two men out there and they said James
6 had killed somebody and he was a criminal, he was a
7 murderer. They just kept feeding me with all this
8 stuff.

9 Then they said -- see, I didn't know this
10 was going to start getting emotional. You know what I am
11 saying?

12 And they said that he had been a murderer
13 all his life and he had been in the penitentiary, and
14 they was feeding me with all this stuff.

15 They said, get on out of here. You can't
16 see him. It was just, you know, a lot of stuff they were
17 saying. And some of the stuff I didn't know, either.

18 But I was inclined to believe them because
19 they had this long piece of paper with all this stuff on
20 it, you know.

21 Q. Did they let you see him?

22 A. No.

23 Q. When was the first time you saw him after the
24 arrest?

25 A. It was a while. It was a long -- I can't quite

1 remember. But I didn't see him that day.

2 Q. Was it within a couple days you saw him?

3 A. Possibly. I can't remember when I saw him. It
4 wasn't a long time after that.

5 The man is saying, no, you can't see him
6 for so many hours, he said. I don't know if it was 48,
7 62, one of those famous numbers or something, hours I had
8 to wait. Because he said he was in interrogation.

9 Q. What was he like when you saw him the first
10 time?

11 A. He was like a statute.

12 Q. What do you mean?

13 A. He was sitting there like -- he wasn't saying
14 nothing. He was sitting there rocking like a statute.
15 He was numb. He wouldn't answer no questions.

16 I said, what is -- he wasn't saying
17 anything. He was like he was in shock or something. So,
18 I asked him, I said, are they beating you, are you scared
19 to talk?

20 I was searching for something. I don't
21 know.

22 Q. Did he ever tell you he killed these people?

23 MR. BAKER: Objection. Hearsay.

24 A. I asked --

25 THE COURT: Well, I think I will let her

1 answer that. I think he is a party to this proceeding
2 and I think it is admissible.

3 Go ahead.

4 Q. Did he ever tell you that he had stabbed these
5 victims?

6 A. That he did? No. I asked him. I asked him the
7 first time and kept asking him and kept asking him and
8 kept asking him.

9 Finally after so many times I saw him, he
10 said, I can't remember.

11 I got real mad with him. I mean real mad
12 with him. I got real upset with him when he said I
13 couldn't remember.

14 I said, you can't remember? Man, you
15 going to be slaughtered and you can't remember. What
16 kind of answer is that?

17 THE COURT: That statement is admitted not
18 for whether he in fact could remember or not remember but
19 as to notice to her.

20 One of the issues in this particular case
21 is consistency or lack of consistency on that point. I
22 am not admitting it for the truth of it but just for the
23 utterance of it.

24 Next question.

25 Q. Do you remember when Mr. Lionel Barrett got

1 involved in the case?

2 A. Uh-huh, I remember. Yes.

3 Q. Was there anybody that you knew or James knew
4 that was in a position to pay a retainer, fee to Mr.
5 Barrett?

6 A. What you say -- at first there was that man
7 Mustofa.

8 MR. REDICK: That is the Neal McAlpin, for
9 the record.

10 THE COURT: Let's establish that through a
11 witness.

12 A. His name was Mustofa.

13 Q. Is that the same person that is Neal McAlpin?

14 A. Yes. Neal McAlpin. That is the same person. But
15 he played in his band and used that name Mustofa.

16 THE COURT: What was the name of the
17 band? A.

18 A. Name of the band was -- gosh. They play raga
19 music. Like three or four of them. Really good. They
20 were really good.

21 THE COURT: Was it African Dreamland?

22 A. Yes, yes, that is the name of it, African
23 Dreamland.

24 Have you seen them?

25 I am sorry.

1 Q. Just answer my questions.

2 THE COURT: Go ahead.

3 Q. So, Neal McAlpin was the lawyer first and then
4 later Mr. Lionel Barrett became the lawyer, do you
5 remember?

6 A. Yes. Neal called me and said he couldn't do it.

7 Q. And then Lionel Barrett became involved?

8 A. He told me this other man was going to do it.

9 Q. Were you in a position to pay Mr. Barrett any kind
10 of fee?

11 A. No. I wasn't even in position to pay my rent.

12 Q. Was James in a position to pay a fee?

13 A. No.

14 Q. Who that you know of, all the people you knew did
15 you think was in a position to pay a fee?

16 A. Nobody had that kind of money, none of our
17 friends, but Allen Boyd and maybe William Beard.

18 I mean, either one of them would have that
19 kind of money.

20 Q. Did you know anybody else who would have that kind
21 of money?

22 A. Had that kind of money? Well, I know Devalle and
23 Karen didn't. No. Charlie didn't have that kind of
24 money.

25 I don't think the other people in the

1 group would have had that kind of money.

2 No, I don't know anybody else that would
3 have that kind of money.

4 Q. After Mr. Barrett got involved in the case, do you
5 remember how many times you met with him or spoke with
6 him about the case?

7 A. I think it was twice or three times. One time I
8 called him and said I needed to get down there to bring
9 James some underwear or socks.

10 Q. And you and he talked?

11 A. He sent that other man.

12 Q. Wait a minute. In that conversation with Mr.
13 Barrett, did you and he talk about the case at all?

14 A. The case?

15 Q. The facts and circumstances of the case or what
16 you might do to help, or anything like that?

17 A. No. No. The first time I called him he said he
18 might want me to -- he might need me to testify at the
19 case.

20 Q. Did he talk to you about what your testimony might
21 be?

22 A. No. He said to testify and tell the truth. I
23 would tell the truth.

24 Q. So then you mentioned Ed Swinger?

25 A. Yes, that is his name. That is the man that

1 helped me get down there to take the stuff.

2 Q. To go to the jail?

3 A. To give the stuff.

4 Q. What kind of stuff?

5 A. Socks and underwear and toothpaste and tooth brush
6 and whatever.

7 Q. Did Mr. Swinger ever sit down with you to talk
8 about the case or your possible testimony in the case?

9 A. No.

10 Q. Do you remember the next time --

11 A. He called me on the phone and started asking me
12 something, some questions, this Swinger man did.

13 Q. How long was that conversation?

14 A. I don't know. Maybe five minutes.

15 Q. Then after that, do you remember the next time you
16 spoke with Mr. Barrett?

17 A. No. At the courtroom.

18 Q. That was the next time you spoke to him about the
19 case?

20 A. I spoke to him three times that I know.

21 Q. Go through --

22 A. Two times I called him and one time he called me.
23 That was Mr. Barrett.

24 The other man, he called me.

25 Q. Which other man is that, Neal McAlpin, Sumter Camp

1 or Mr. Swinger?

2 A. The Swinger man.

3 Q. Do you remember talking with Mr. Sumter Camp?

4 A. Who?

5 Q. Sumter Camp, a thin fellow?

6 A. No. That name doesn't ring a bell.

7 Q. Did Mr. Barrett ever ask you any questions about
8 your life with James or the circumstances of his life,
9 James' life?

10 A. No. But I called him and I told him James needed
11 some help.

12 Q. Did you explain why?

13 A. Yes, I explained why. I told Allen that. I told
14 everybody, you know.

15 Q. What did you explain to Mr. Barrett?

16 A. I told him, I said, James, he needs some help.
17 Why don't you try to see, you know, maybe before the
18 trial or something try to get him -- I hate to say
19 this -- a psychiatrist to take a look at him, to talk to
20 him, you know. Just to talk. I think maybe if he got a
21 psychiatrist to talk to him, maybe he would remember.

22 Q. Until the arrest on February 19, 1986, during the
23 time when you knew James, did he ever get in trouble?

24 A. I am sorry. Say it again.

25 Q. Did he ever get in trouble, any trouble with the

1 law or trouble at work or anything like that that you
2 know of?

3 A. In trouble?

4 Q. Yes.

5 A. No.

6 Q. Is James subject to influence? Is he someone that
7 can be influenced?

8 A. Jasmine influences. She is five.

9 Q. Pardon me?

10 A. I am sorry. Answer the question.

11 Yes, I think so.

12 Q. Explain that.

13 A. Jasmine is five. She is subject to influence. I
14 mean, if James trusts you and you won is confidence and
15 you won a place beside him or as a friendship, then he is
16 subject to influence.

17 Q. How would you describe James Lee Jones, Junior?

18 A. How would I describe him?

19 Q. Yes, the person.

20 A. Good person.

21 Describe James. As a human that is
22 looking for a sense of belonging with, whether it be
23 family life, mother and daddy relationship, good, not
24 dysfunctional type relationships but one where there is
25 unconditional love and someone -- a need to be loved, you

1 know. A need to be loved. Like a child seeking approval
2 and love from a parent or something.

3 I would describe James as a human being
4 looking for the same thing every other human being in
5 life is looking for.

6 Someone to want and love them and wanting
7 to be loved in return.

8 Only difference is that he is at a lower
9 level than what I feel most human beings are. He is
10 at -- I feel like he is a maturity level of sometimes a
11 five year old, sometimes a teenager, sometime an
12 adolescent and sometimes an adult, you know.

13 MR. MACLEAN: Just a second, Your Honor.

14 Q. How would you describe his heart and sole?

15 A. Oh, I see -- when you say that, you make me
16 emotional again. Because he really got a good heart.
17 You know what I am saying? And it is there.

18 I thought I could fix it and wring it out
19 but I couldn't. I wasn't the right person, I guess, to
20 do it. I didn't have what it takes to mend his heart and
21 let his heart grow.

22 THE COURT: Mr. Baker, it is your
23 opportunity.

24 I have one question for the witness in the
25 interim.

1 Can you tell me your educational
2 background?

3 A. I have got three years of college. I will --
4 I am an LPN, licensed, but it expired.

5 THE COURT: Where did you go to college?

6 A. I went to Tennessee State and I had classes at
7 Vanderbilt.

8 THE COURT: All right.

9 THE COURT: What kind of work do you do
10 now?

11 A. I am in accounting. I work in accounting.

12 THE COURT: All right. Mr. Baker.

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EXAMINATION OF SUSI BYNUM

BY MR. BAKER:

Q. Ms. Bynum, you and Mr. Jones liked to watch movies and rent movies, didn't you?

A. Uh-huh. Yes. I still do.

Q. And there is one movie in particular called Scar Face that Mr. Jones really liked?

A. Somebody else said that same thing. James and I never watched Scar Face together.

Okay. I don't know, maybe he watched it with some of his male friends or Devalle or somebody. I never watched Scar Face with James.

Q. So, if you had testified at the post -- do you recall testifying at the post conviction proceeding in about 1993?

A. Uh-huh. I testified three times that I can remember. Yep.

Q. Do you recall testifying that you and James watched movies and rented videos?

A. Yes, I remember that. I don't remember testifying we watched a particular movie Scar Face. It seemed like I was asked that before. We watched a lot of movies.

If James rented Scar Face and watched it, Susi wasn't sitting down watching it with him. You know, could have watched it with Devalle or some of the boys or

1 something.

2 Q. Do you recall this line of questioning when you
3 testified in 1993?

4 Question. What sort of movies did you
5 rent and seem to be interested, seemed to be of interest
6 to him?

7 Answer. I liked --

8 A. Action.

9 Q. Answer. This is your answer. I liked us
10 together, not what I like, okay. James would like movies
11 like Dragnet and westerns and Scar Face, Ten
12 Commandments, Joshua, different type variety.

13 A. Uh-huh. Did I say he watched it with me?

14 Q. Now, there was another question after that. The
15 question was, can you recall a specific movie he watched
16 once where there was drugs involved and what happened?

17 Your answer was. He seemed to be
18 fascinated with that movie Scar Face.

19 You and him had watched that movie,
20 correct?

21 A. I don't recall watching Scar Face with James.

22 Q. Do you recall him being fascinated with the movie
23 Scar Face though?

24 A. He might -- that movie comes up and comes up and
25 comes up. He might have been.

1 Man, James was fascinated with a lot of
2 movies. James was a movie watcher, you know what I am
3 saying; action anything, that was Army movies, cowboys
4 and indians.

5 I don't recall James ever telling me
6 though he was fascinated with Scar Face.

7 Q. You thought he was fascinated with that movie,
8 correct?

9 A. Well, at that time maybe.

10 Q. That was your testimony in 1993?

11 A. Well, I mean it could be. That has been a long
12 time ago. At that time, maybe so. I don't know. I
13 can't remember.

14 You know, in -- back there then I just
15 can't recall Scar Face being one of the things.

16 It seems like that question has been asked
17 and asked and asked.

18 Q. You do think your memory was certainly better in
19 1993 rather than 1998?

20 A. Oh, yes, I think so. I definitely do. I think it
21 is better then.

22 Q. You talked a little bit about telephone
23 conversations with Mr. Barrett, his attorney.

24 Do you recall talking about that this
25 morning?

1 A. Uh-huh.

2 Q. Now, in fact Mr. Barrett had called you on two
3 occasions, the first time was to ask you about this
4 religious group.

5 Do you recall that?

6 A. I recall Mr. Barrett calling me.

7 Q. Do you recall him calling you?

8 A. Uh-huh. I recall me calling him.

9 Q. Do you recall him --

10 A. I can recall speaking to him three times.

11 Q. Do you recall him asking you about what happened
12 on the night of the murder?

13 A. No.

14 Q. If you testified at the post conviction hearing in
15 1993 he did call you and ask you about what happened on
16 the night of the murder, you would not debate that today,
17 would you?

18 A. No. Because that was 1993 and this is 1998. I
19 wouldn't know. I know that he called me. I know he
20 did.

21 I do recall talking to the man, uh-huh.
22 And the other man, too.

23 Q. You have testified also in 1993 that he asked you
24 about this religious organization. You don't dispute
25 that today, do you?

1 A. No. He could have. I mean, I know when he
2 called, we talked. I remember at least talking for five
3 minutes. I don't know what he asked. Whatever he asked.

4 Q. He also called you and asked you to be a character
5 witness for Mr. Jones?

6 A. Character witness. Okay.

7 Q. Do you recall that?

8 A. I recall him calling me and saying that he might
9 need me to testify. He could have said character
10 witnesses.

11 Q. If you testified in 1993 that he said character
12 witness, you're not disputing that today, are you?

13 A. No. No. 1993 I was a witness. Character or
14 whatever.

15 No, sir, I am not disputing that.

16 Q. Do you recall some people from the Middle
17 Tennessee Health Institute talking to you in 1987?

18 A. Mental Health Institute? In 1987?

19 Q. Yes. A social worker, a lady name Rebecca Smith?

20 A. That names rings a bell.

21 Q. Mr. Jones had a hot temper, didn't he?

22 A. Hot temper?

23 Q. In your opinion he had a hot temper?

24 A. A hot temper?

25 Q. I am asking you.

1 A. Wait. I am thinking. Define hot temper for me,
2 please.

3 Q. A man who would get upset about things that did
4 not make him happy.

5 A. A man that would get upset about things that did
6 not make him happy?

7 Q. Yes.

8 A. Yes. I would say yes.

9 Q. Sometimes we get very upset?

10 A. I have a hot one, too, then.

11 Yes, sir, I would say yes. If he got
12 upset about things, that didn't make him happy.

13 Q. How would you define hot temper?

14 A. I would define hot temper as somebody that stayed
15 upset about any little thing, you know, regardless if it
16 wasn't going their way they would just blow off the
17 handle and just blow-up.

18 That is what hot temper -- that is what I
19 would define hot temper.

20 Q. If you had told somebody in 1987 that James Jones
21 had a hot temper, that is what you meant?

22 A. I would say he -- gee, probably so. My definition
23 of things in 1998 is different than some of my definition
24 of things in 1987.

25 I have grown, too, you know what I am

1 saying? I am matured a little bit, too. I didn't stay
2 at the same maturity level I was at that time as I am
3 now. I choose to think today I am better and I am
4 searching and trying to improve myself. I am actually a
5 little out of time doing that.

6 The way I looked at things in 1987 might
7 not be the way I look at things in 1998. Because in 1985
8 I thought I could change people. But I don't think that
9 today.

10 Q. So in 1987 if you thought James Jones had a hot
11 temper, are you saying you don't believe that today? Is
12 that what you're saying?

13 A. No, no. I am saying that the definition you gave
14 for a hot temper, yes, he does have a hot temper. That
15 is what I am saying.

16 Q. What about the definition you gave? Was that the
17 definition you would have gave in 1987?

18 A. Definition I gave?

19 Q. Yes.

20 A. Is that the definition I would have given in 1987?
21 1987 the definition I probably would have gave is
22 probably the definition you gave today. Because, you
23 know --

24 Q. Why do you say that?

25 A. Because I think about my baby's got -- I say that

1 because I am looking -- that probably would be the
2 definition, you know, that I gave. Because that --

3 THE COURT: I got the point here.

4 Q. You talked about socializing with the Millers,
5 Devalle Miller and the wife's name is Karen, right?

6 A. Right.

7 Q. And you all socialized?

8 A. Yes.

9 Q. At these socializing, gatherings, there would be
10 beer drinking you said?

11 A. Yes.

12 Q. And also drugs were there?

13 A. Reefer.

14 Q. Marijuana?

15 A. Reefer, marijuana.

16 Q. Now, were these religious gatherings or social
17 gatherings?

18 A. No. No. We didn't have -- it wasn't marijuana at
19 the South Ministry gathering.

20 Q. I am talking about Mr. Miller and his wife?

21 A. At our houses?

22 Q. Yes.

23 A. Yes. We drank and smoked marijuana, right.

24 Q. Those weren't religious gatherings. Those were
25 socializing between you and the Millers?

1 A. Yes. Well, the house. Yes, socializing.

2 Q. In fact, there was a lot of marijuana smoking
3 going on with Mr. Jones, yourself and the Millers?

4 A. There was a lot of drinking, I would say, beer
5 drinking going on, okay. James couldn't drink beer. I
6 wasn't a big -- fond person on marijuana. But I will
7 try, you know. But I couldn't --

8 Q. Mr. Jones was a big user of marijuana?

9 A. Now, he could smoke marijuana. He couldn't drink
10 beer. On the other hand, Karen -- we all had our, you
11 know, what we could, what we liked and did not like.

12 Q. In fact, Mr. Jones smoked a lot of marijuana,
13 didn't he, especially with Mr. Miller?

14 A. I don't know what Mr. Jones and Mr. Miller did
15 when Mr. Jones and Mr. Miller was together. When Mr.
16 Jones and Mr. Miller and me and Karen was together, we
17 all drank and smoked. James couldn't drink. He smoked.
18 You used the word a lot. I want -- I wouldn't say a
19 lot.

20 There has been a period in my life where I
21 did do a lot. I don't see the lot then as the same as
22 lot then and there.

23 Q. Do you recall talking by telephone to a person by
24 the name of Diana McCoy, somebody calling you up and
25 asking you about this case last year?

- 1 A. That rings a bell --
- 2 Q. Does that ring a bell?
- 3 A. That name does ring a bell.
- 4 Q. Why would you tell her that James smoked a lot of
- 5 marijuana?
- 6 A. That name rings a bell.
- 7 Q. Why would you tell her that James smoked a lot of
- 8 marijuana?
- 9 A. Did I tell her that?
- 10 Q. Yes.
- 11 A. Then I must have thought at that time that was a
- 12 lot of marijuana.
- 13 Q. You have stated that --
- 14 A. Don't get me wrong. We dranked and we smoked. I
- 15 want you to know, we dranked and we smoked.
- 16 THE COURT: If you're going to continue
- 17 this conversation, define a lot.
- 18 A. We did drinking and smoking.
- 19 THE COURT: Ms. Bynum, that is enough. Go
- 20 ahead, Mr. Baker.
- 21 Q. Yes, Your Honor.
- 22 A. I don't know what is a lot or not.
- 23 THE COURT: Wait for the next question.
- 24 A. We shouldn't have done any of it.
- 25 THE COURT: Wait for the next question,

1 please.

2 Go ahead, Mr. Baker.

3 Q. Mr. Jones eventually talked to you about the
4 incident that is at issue in this case, is that true?

5 A. Yes. He told me he didn't remember.

6 Q. He told you he was in the wrong place at the
7 wrong time and he did not take part in the murder, didn't
8 he?

9 A. Yes, he told me that, too. I said, what happened?
10 He said, I don't remember. He did tell me that, too.
11 I recall him saying that to me.

12 For a long time he wasn't even talking
13 though.

14 Q. Now, at the time of this murder which is in
15 February of 1986, you did not see any unusual behavior
16 with Mr. Jones or any significant changes in his
17 behavior, did you?

18 A. He got more agitated.

19 Q. If in 1987 --

20 A. Agitated.

21 Q. In 1987 if you told a mental health worker that
22 Jones did not evidence unusual behavior or change in
23 behavior during the time period in question, you're not
24 disputing that, are you?

25 A. If I told her that then?

1 Q. Yes.

2 A. I think about that now, yes, I would dispute
3 that.

4 Q. But then did you make that statement, is what I am
5 asking you?

6 A. I am not saying I didn't. I don't remember making
7 that statement. I might have. Don't get me wrong.

8 I would dispute that right now because
9 when I think about it, when I sit down and --

10 MR. REDICK: Could we approach the bench,
11 please?

12 THE COURT: Yes.

13 (Whereupon, the following discussion was had at
14 the bench.)

15 THE COURT: Is that Mr. Beard?

16 MR. REDICK: I think that is Mr. Mann and
17 Gail Hughes Mann.

18 THE COURT: All right.

19 MR. BAKER: I am going to wrap it up.

20 THE COURT: All right.

21 (Whereupon, the discussion at the bench was
22 completed.)

23 THE COURT: A couple individuals entered
24 the courtroom. This is Mr. Mann?

25 MR. MANN: Yes, sir.

1 THE COURT: Be patient with us for a few
2 moments. Mr. Baker is going to complete his examination
3 and then we will have a discussion.

4 Go ahead, Mr. Baker.

5 Q. Ms. Bynum, you talked about going to the police
6 department after Mr. Jones was arrested.

7 Do you recall talking about that earlier
8 this morning?

9 A. Yes, sir.

10 Q. In fact what the police officer was telling you is
11 you would have to come back during certain visiting
12 hours, you couldn't just go in and see him?

13 A. No, they didn't say that. He said, you can't see
14 him right now. It will be so many hours before you can
15 see him. What you need to do is go on home and forget
16 about this man.

17 That is what he said. I remember that
18 well. That makes me emotional because he was saying, go,
19 forget about him. That is what he said. He didn't say I
20 could come back and visit him. You can visit him all
21 Sundays or none of that. He said you can't see him right
22 now, it will be so many hours. What you need to do is go
23 home and forget about this man.

24 Those were his exact words. Go home and
25 forget about this man. Because those words hurt me when

1 he said them.

2 MR. BAKER: That is all, Your Honor.

3 THE COURT: Any redirect?

4 MR. MACLEAN: No, Your Honor.

5 THE COURT: Ms. Bynum, thank you. You may
6 step down. Have a safe trip back to Memphis.

7 MR. MACLEAN: May I be excused for about
8 two minutes?

9 THE COURT: All right. I will sit right
10 here while anybody that needs to step out.

11 MR. MACLEAN: Thank you.

12 THE COURT: Since we do have lawyers for
13 both parties here, I am going to mention a couple things.
14 Regarding evidentiary rules, we have had all kinds of
15 discussions regarding hearsay, how the federal rules
16 interrelate to the state rules or lack of state rules,
17 and so forth.

18 Often there have been objections
19 interposed that anticipated certain answers. Those
20 answers were never forthcoming. Something else would
21 come out of the witness' mouth.

22 In light of that, to the extent in my
23 opinion that I rely on testimony that has been objected
24 to, I will, if necessary, re-evaluate any objections in
25 light of the actual answer given and take appropriate

1 action to either reconsider or not reconsider.

2 At the moment I don't have anything in
3 mind particularly but sometimes a question would occur
4 like did Mr. Jones ever say something and the answer
5 would be more mental impressions drawn from a period of
6 experience rather than hearsay itself. I will be
7 re-evaluating those as necessary. I don't have a
8 specific quote in mind.

9 But I think there has been a tendency in
10 this particular case for things to go in that direction
11 in light of all the evidentiary complications we
12 discussed.

13 I always hesitate to do things like this
14 because matters related to race are frequently sensitive
15 in this country of ours. But because we have had
16 testimony related to the racial background of Mr. Jones,
17 particularly his half sister, is fairly elaborate
18 testimony and how that all fits together I think the
19 record needs to be clear regarding the races of some of
20 the people involved.

21 Ms. Walton who testified earlier this
22 morning is Caucasian and Ms. Bynum is black. I don't
23 know if there was any direct testimony about Mr. Jones'
24 race. That has been the subject of some discussion. We
25 are expecting expert testimony, perhaps, on some of these

1 issues.

2 I just wanted to make sure what the Court
3 is able to observe is reflected in the record that we are
4 all sitting here and observing. I am not suggesting any
5 particular results out of any of that.

6 Since those issues are sensitive, I want
7 the court of appeals to have at least the benefit of
8 the visual observation of the district judge in that
9 regard.

10 Mr. Mann, if you could step forward,
11 please, sir. Come on through. Step up to that podium
12 and that way I will be able to hear you.

13 Thank you for being here. I appreciate
14 it. I know the Marshals served you with an order to be
15 here. What I need to discuss with you is the location of
16 your wife, Gail Hughes Mann. She is a witness in this
17 proceeding and I need to ask her some questions and it
18 came to my attention you may know her whereabouts.

19 Maybe she is in the courtroom. I will let
20 you respond to that. We have had some expression of
21 concern by other witnesses about testifying in this case
22 and in the event there are concerns you need to raise to
23 me, I will be happy to hear them and consider them. It
24 is extremely important that we get to the bottom of the
25 facts in this case.

1 I know it is unpleasant to have someone
2 summon you here. I am here every day. This is like home
3 to me but unpleasant to others. I expect no one here is
4 having fun in the courtroom.

5 With that background and a request for
6 your full cooperation, I will ask you if you can
7 enlighten me to the whereabouts of your wife. I
8 understand she is your wife. That may not be correct
9 either.

10 MR. MANN: My wife is Gail Mann. She is
11 here with me right now.

12 THE COURT: All right.

13 MR. MANN: She is seated in the courtroom.

14 After having discussions, we had come here
15 before to discuss this case -- I don't know exactly what
16 was going on. But we have been here before.

17 THE COURT: In this courthouse?

18 MR. MANN: I guess the other courthouse.
19 We we are in the main courthouse.

20 THE COURT: That is Davidson County
21 Court?

22 MR. MANN: I thought we had answered all
23 questions that needed to be answered at that time. We
24 were just trying to get all this out of the way and put
25 it as far behind us as we can and move on.

1 People show up at my job to summons me to
2 be here today. I still don't know. In talking with her,
3 she says I don't have anything to add to the case; I
4 don't know why they keep asking me to come and come and
5 come. We are trying to get this taken care of and move
6 on.

7 THE COURT: Ms. Mann, are you prepared to
8 testify?

9 MS. MANN: Yes.

10 THE COURT: Stand up and identify
11 yourself.

12 MS. MANN: Gail Mann.

13 THE COURT: All right. What I suggest we
14 do is, Ms. Mann, I think probably the most productive
15 thing to do in this instance, if you are so willing, is
16 to talk briefly with the lawyers for each side to see
17 what it is they want to discuss with you.

18 I don't expect your testimony necessarily
19 to be unduly lengthy. But there have been things raised
20 in this proceeding that I believe you may have knowledge
21 of that are important. That is why the sense of urgency
22 to get you here. I understand your desire to get matters
23 behind you. It is not my intention to drag this out and
24 make you uncomfortable or harass you in any way. My
25 obligation is to get to the bottom of things, to insure a

1 fair proceeding. It is necessary for you to do that.

2 If you feel, hypothetically, that you have
3 some privilege not to testify or if you have been coerced
4 in any way by anyone not to be here earlier or not to
5 testify, you need to bring that to my attention. If you
6 need to tell me something outside the presence of anyone
7 else, I will be happy to hear that, too. That may
8 conclude that ultimately you will need to say it in the
9 presence of others but as a starting point I can at least
10 hear any concerns you have in that regard.

11 Now, let me hear from the lawyers in this
12 particular case whether they are interested in a brief
13 discussion to try to narrow the scope of her testimony or
14 whether we should just invite her to testify at this
15 time.

16 Mr. MacLean, Mr. Baker.

17 MR. BAKER: I guess either way with us.
18 We just as soon do it now unless it is going to be unduly
19 lengthy.

20 THE COURT: Do you expect anything
21 lengthy?

22 MR. MACLEAN: No. It is going to be very
23 short, I believe.

24 THE COURT: It think it all boils down to
25 one question.

1 MR. MACLEAN: One line of questions
2 anyway.

3 THE COURT: All right. Would you like Ms.
4 Mann to go ahead and testify now?

5 MR. MACLEAN: I think this would be a good
6 time.

7 THE COURT: Ms. Mann, if you will step
8 forward.

9 Mr. Mann, I would ask you to step behind
10 the rail there. You can get a seat anywhere you feel
11 comfortable to observe.

12 Ms. Mann, if you will step forward and
13 raise your right hand, please, ma'am. Step up here to
14 where I am.

15 (Whereupon, the witness was duly sworn.)

16 THE COURT: Ms. Mann, let me tell you who
17 these people are.

18 This is Mr. Brad MacLean, Mr. Jones'
19 lawyer; Mr. Redick is next to Mr. Jones. He is on his
20 side, too. I want you to know everybody.

21 This is Mr. Baker, and I have just drawn a
22 blank of Mr. Baker's co-counsel.

23 MR. UNGURAIT: Don Ungurait.

24 THE COURT: And they represent essentially
25 the State of Tennessee. They represent individuals for

1 the State of Tennessee and they are both entitled to ask
2 you some questions. I obviously am the judge. The rest
3 of the people on this side of the bar are court
4 employees, the people on that side are observing.

5 You having just been summoned here, I
6 wanted to make sure you knew who all the players were,
7 since you didn't have a chance to meet some of these
8 individuals before.

9 Mr. MacLean.

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EXAMINATION OF GAIL HUGHES MANN

BY MR. MACLEAN:

Q. I am Brad MacLean. You and I never have spoken before, have we?

A. No.

Q. Are you aware that we have tried to reach you and tried to ask you to testify in this case?

A. Yes.

Q. Is there a reason why you would not want to tell us -- why you were reluctant to testify in this case?

A. Well, my husband and I discussed it and I don't have anything to contribute to the case.

Q. Ms. Mann,, do you remember testifying -- you may not remember the year -- but back in 1993 in the other courthouse, Davidson County Courthouse in this case, correct?

A. Yes, sir.

Q. Was your testimony back then truthful and correct?

A. Yes.

Q. You know James Lee Jones, correct?

A. Yes.

Q. You met James Lee Jones when you were working at the Urban League back in early 1985, correct?

A. Yes, that is correct.

1 Q. And at that time Mr. Jones was at the Opportunity
2 House, correct?

3 A. Yes.

4 Q. And that was a halfway house here in Nashville?

5 A. Yes.

6 Q. And you and Mr. Jones formed a relationship,
7 correct?

8 A. Yes.

9 Q. And you and he became engaged to get married?

10 A. Yes.

11 Q. When he got out of the Opportunity House you
12 helped set him up in an apartment, is that right?

13 A. Yes, uh-huh.

14 Q. And then subsequently you and he broke off that
15 relationship, correct?

16 A. That's correct.

17 Q. Now, do you recall after James Jones was arrested
18 in this case in February of 1986, you tried to assist him
19 and line up legal counsel, correct?

20 A. Yes.

21 Q. And do you recall your efforts to line up Lionel
22 Barrett as his legal counsel?

23 A. Yes, I do.

24 Q. How did that come about?

25 A. Well, I just looked in the phone book. I think

1 that is how I came about his name. I picked him out and
2 called him up and talked to him.

3 Q. When you talked to him, what did you and he
4 discuss?

5 A. Well, just him representing James.

6 Q. Was there any discussion about the nature of the
7 case?

8 A. Yes, uh-huh.

9 Q. What did you tell Mr. Barrett?

10 A. That he had been arrested, and I can't remember
11 everything I said. Basically they had been arrested
12 for some drug bust case and that he needed a
13 representation.

14 Q. Based upon the information we have gathered from
15 Mr. Barrett's file it appears that you and he may have
16 spoken around August of 1986.

17 Do you have any recollection of the time
18 when you first spoke to him?

19 A. It could be around that time. A few months after
20 that.

21 Q. Did Mr. Barrett tell you he would be willing to
22 represent Mr. Jones?

23 A. Yes, uh-huh.

24 Q. What did he tell about the terms or conditions
25 upon which he would represent Mr. Jones?

1 A. As far as I can remember, he said that the amount
2 it would cost -- I think he said \$15,000.

3 Q. Did he tell you he needed that \$15,000 on before
4 he started work on the case?

5 A. No. I just told him I would try to get some is
6 all.

7 Q. Where did you go or how did you go about trying to
8 raise the money to pay Mr. Barrett?

9 A. Well, I got the money from Boyd. He gave me
10 \$5,000.

11 Q. Allen Boyd?

12 A. Yes.

13 Q. How did you know to go to Mr. Boyd?

14 A. I believe James must have told me. I wouldn't
15 have known.

16 Q. Where was it that Mr. Boyd gave you \$5,000?

17 A. I went up to where he worked, Nashville Baptist
18 Publishing Board.

19 Q. Did you know Mr. Boyd before then?

20 A. Not really. I knew him from the Nashville Urban
21 League but other than that, no.

22 Q. When you went to Mr. Boyd to collect the money,
23 did he know why you were there?

24 A. Sure. He wouldn't have given me the money.

25 Q. Had you contacted him before that point in time

1 when you actually went to the Nashville Publishing Board?

2 A. I don't think so.

3 Q. Somebody else talked to Mr. Boyd and he knew you
4 were going to arrive to collect the money?

5 A. No. I told him -- I called him to tell him I was
6 coming.

7 Q. You called him ahead of time?

8 A. Sure. He had it ready when I got there.

9 Q. You asked if he could raise the money?

10 A. Yes.

11 Q. Did you tell him how much you needed?

12 A. Yes.

13 Q. How much did you tell him you needed?

14 A. I believe \$15,000.

15 Q. Did he tell you he would raise the 15,000?

16 A. I don't remember. I don't know how we came up
17 with it. I guess that is all he could get.

18 Q. When did you first learn he would only pay
19 \$5,000?

20 A. I am sure he told me on the phone then. Because I
21 wasn't expecting it when I got there.

22 Q. When you got to the Nashville Baptist Publishing
23 Board, you weren't expecting --

24 A. To get \$15,000.

25 Q. What was the form of currency?

1 A. Cash.

2 Q. Was it in certain type denominations. What kind
3 of bills?

4 A. Just small bills.

5 Q. Did he say anything to you when he gave you the
6 money?

7 A. It is a while ago. I am sure he did. I don't
8 remember what he said.

9 Q. What did you do with the money?

10 A. I got a money order for it.

11 Q. Where was that?

12 A. First American Bank.

13 Q. How was the money order made out, payable to Mr.
14 Lionel Barrett?

15 A. Right, uh-huh.

16 Q. And then do you remember whether there was any
17 other information on that item?

18 A. Well, just it was written out it came from me is
19 all.

20 Q. Then you went to Mr. Barrett's office?

21 A. Uh-huh.

22 Q. Was Mr. Barrett expecting you at that time or did
23 you just show up at his office?

24 A. He was expecting me, yes. I had an appointment.

25 Q. Did you set up the appointment before you went to

1 Mr. Boyd?

2 A. To take the money to Mr. Barrett? No, I don't
3 think so.

4 Q. You first got the money from Mr. Boyd and then you
5 called Mr. Barrett to set up an appointment and then you
6 went to Mr. Barrett's office at the appointed time, is
7 that correct?

8 A. Uh-huh.

9 Q. What happened there?

10 A. Well, I gave him the money order.

11 Q. Did you tell him where the money came from?

12 A. I don't remember that. I don't know if I told him
13 or not. I probably did. I don't know.

14 Q. In the post conviction proceeding you testified
15 you did tell Mr. Barrett?

16 A. Probably so.

17 Q. Can you testify to that today?

18 A. That I told him?

19 Q. Yes.

20 A. I don't remember. I don't know. I might have
21 told him. If I say I told him back then, I did then tell
22 him.

23 Q. Did you have any further discussions with Mr.
24 Barrett about the balance of the fee at that time when
25 you delivered the money to him?

1 A. I don't remember. I probably told him that is
2 all I could get. I didn't try anything else to get
3 anymore.

4 Q. Did you have any subsequent discussions with Mr.
5 Barrett about the fee?

6 A. I don't remember any.

7 Q. Mr. Barrett has a memo in his file in this case,
8 Exhibit Number 29, memo to his secretary. I am sure you
9 never have seen this before.

10 He tells his secretary, please call Gail
11 Hughes, on December 17, 1986. She still owes \$10,000 on
12 the matter involving James Lee Jones. She has paid
13 \$5,000. I need to start doing a lot of work on Mr. James
14 Lee Jones' case next week. Please find out if it is
15 going to be possible for her to bring in the additional
16 \$10,000 prior to the start of the year since there is a
17 lot of work to be done on this murder case. I need to
18 know what the status is.

19 And then down below it indicates that
20 Gwen, the secretary, left messages with you around the
21 17th of December and then you apparently called back and
22 said you don't have it now but you will try to come up
23 with it.

24 Does that refresh your recollection at
25 all?

1 A. A little bit.

2 Q. So, there was subsequent discussion between you
3 and Mr. Barrett about collecting the balance of the
4 fee?

5 A. I guess so.

6 Q. What did you try to do to collect the balance of
7 the fee?

8 A. I don't remember. I know I couldn't get anymore
9 from Mr. Boyd.

10 Q. Did Mr. Boyd tell you he wouldn't pay anymore?

11 A. I understood that from the beginning that that was
12 it.

13 Q. And then on February 3, 1987, there is another
14 memo, Exhibit Number 32, to Gwen from Lionel. It says,
15 please call Gail Hughes and tell her I want to start work
16 on the case involving James Jones but she only paid
17 \$5,000 and we need to have the additional money paid. I
18 would like to meet with her next week about it, a number
19 for her -- and gives a telephone number.

20 Below on that same memo it says the same
21 date, February 3rd, that apparently Gwen spoke with you
22 and told you that Mr. Barrett was getting involved in the
23 case and that you needed to get some additional money in.
24 You said you would call your funding source today.

25 And then it appears Gwen set up an

1 appointment for you to come in the following Tuesday.

2 Do you remember anything about that?

3 A. Let me see. That is how I would put it. I guess
4 I was trying to contact Allen again to try to get more
5 money.

6 Q. Do you remember meeting with Mr. Barrett
7 subsequently?

8 A. Not really. I met with him a few times. I don't
9 remember subsequently.

10 Q. Do you remember you met with him and talked to him
11 about the fee or how to raise the money?

12 A. No.

13 Q. You don't remember what you talked about with
14 him?

15 A. Not really. It has been so long.

16 Q. Then there is another memo in Mr. Barrett's file.
17 This has been made Exhibit 36. And it is to Gwen from
18 Lionel, to his secretary from Mr. Barrett dated February
19 23, 1987.

20 It says, please call Gail Hughes and tell
21 her I am really confused about the situation, I have got
22 the initial money that she has paid and I am willing to
23 represent James Lee Jones but she has got to come in and
24 meet with me so we can talk about the case and see where
25 we stand on it.

1 Then down below a handwritten note
2 apparently from Gwen saying that same day she spoke with
3 you and gave you an appointment for Monday, March 2nd at
4 five o'clock.

5 Does that refresh your recollection at
6 all?

7 A. No.

8 Q. Do you remember after you paid the initial \$5,000
9 to Mr. Barrett going into his office on one or more
10 occasions to talk about the fee situation?

11 A. Uh-huh.

12 Q. You did do that?

13 A. Yes.

14 Q. Do you recall what you discussed with him during
15 those meetings?

16 A. No.

17 Q. Do you recall whether he told you he needed to get
18 paid the balance before he could really start working on
19 the case?

20 A. Sure, yes.

21 Q. He said that to you?

22 A. Yes.

23 Q. Do you remember you telling him you were trying to
24 raise the money?

25 A. Sure, yes.

1 Q. Did Mr. Barrett understand you were not the
2 person that had the money, you had to get it from another
3 source?

4 A. Yes.

5 Q. And did you understand -- was Mr. Boyd the primary
6 source you were looking to?

7 A. Right. Because I couldn't think of any other ways
8 to get it.

9 Q. Did you try to explain to Mr. Barrett why you were
10 not able to raise the money?

11 A. I am sure I did. I don't remember.

12 Q. In these meetings, did you tell Mr. Barrett you
13 had to go back to Allen Boyd to try to get the
14 money?

15 A. I probably told him that. I didn't see any other
16 way.

17 Q. Were you aware -- did you talk to anybody else
18 about collecting the money to pay Mr. Barrett's fee?

19 A. No.

20 Q. Ms. Mann, did there come a point in time you
21 decided you simply were unable to raise the additional
22 amount?

23 A. Yes.

24 Q. How did you come to that point where you figured
25 you couldn't raise the additional amount?

1 A. Well, just -- I guess I figured if I couldn't get
2 it from Allen Boyd then that was such an enormous amount,
3 that I didn't have no way of getting it.

4 Q. Do you remember about -- you may not remember -- I
5 am asking the best you can recall.

6 Do you remember what time of the year that
7 would have been when you decided you couldn't raise the
8 additional amount?

9 A. It was just a few months after I gave him the
10 initial amount.

11 Q. Did you tell Mr. Barrett that you tried and you
12 struck out and you just couldn't raise anymore money, or
13 anything to that effect?

14 A. I am sure I did. I didn't want him to think I had
15 anywhere else to get it. I didn't have it.

16 Q. Would you have told -- these messages appear to
17 indicate that you would be reached on the telephone by
18 Gwen, Mr. Barrett's secretary, not Mr. Barrett himself.
19 Is that the way it worked?

20 A. Right.

21 Q. Did you ever receive a telephone call directly
22 from Mr. Barrett?

23 A. I don't remember ever receiving one.

24 Q. Did you ever call Mr. Barrett's office and talk to
25 Mr. Barrett on the telephone?

1 A. I don't believe I ever got to talk to him on the
2 phone. Just in person.

3 Q. But you met with him on a couple occasions at
4 least about this?

5 A. At least, yes.

6 Q. When you told Mr. Barrett that you had struck out
7 or that you wouldn't be able to raise the additional
8 money, did you explain to him why?

9 A. I don't remember. I am sure I did.

10 Q. Did you explain to him you had gone to Allen Boyd
11 and tried to raise the additional money and just couldn't
12 get anymore out of him.

13 MR. BAKER: I object to leading and I
14 think she just answered it.

15 THE COURT: Go ahead and answer that
16 question, and that is the the last time we will ask that
17 one.

18 Q. Do you remember?

19 A. I am sure I did.

20 Q. Did you ever have any discussions with Allen Boyd
21 about this case after that point in time?

22 A. Let me see. I just remember him vaguely saying --

23 MR. BAKER: I object to hearsay.

24 THE COURT: Well, it depends on what
25 her answer is. I don't know. It may or may not be

1 hearsay.

2 A. I am trying to think what he said. I don't
3 remember. It wasn't anything.

4 Q. It wasn't anything?

5 Was that before the trial in July of 1987
6 or was it after the trial of 1987?

7 A. I don't know. I don't remember. I only have seen
8 him once, that one time.

9 Q. That is the only time you actually saw him?

10 A. Right.

11 Q. Did you speak with Mr. Boyd over the telephone
12 about the money?

13 A. Before I went to get it, yes.

14 Q. In order to get the additional money, after you
15 got the initial money, did you ever talk to Mr. Boyd over
16 the telephone?

17 A. I was trying to think. I think I did once. I
18 can't remember. It wasn't anything important said.

19 Q. Have you ever spoken with anybody else besides
20 Mr. Boyd where Mr. Boyd's name came up in the
21 conversation?

22 A. No.

23 Q. Have you ever felt threatened or pressured not to
24 come to court today or at any other time not to get
25 involved in this case?

1 A. No. It is just that I am married and all this
2 doesn't have anything to do with our life today.

3 MR. MACLEAN: Your Honor, can you give me
4 just a moment?

5 THE COURT: Anymore questions?

6 MR. MACLEAN: No, Your Honor.

7 THE COURT: Mr. Baker.

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EXAMINATION OF GAIL HUGHES MANN

BY MR. BAKER:

Q. Ms. Mann, James Jones requested that you go to Mr. Boyd to see if he could obtain funds for his attorney, correct?

A. Yes.

Q. And he knew you were going to do that?

A. Yes.

Q. He was aware of that?

A. Yes.

Q. He was aware Mr. Boyd was able to provide some funds for Mr. Barrett?

A. Yes.

Q. Now, do you know where Mr. Boyd obtained the funds for Mr. Jones?

A. I have no idea.

Q. After you requested the funds from Mr. Boyd it was several weeks after that before he was able to get up the money, is that the best of your memory?

A. I can't remember how long it was. It wasn't immediate.

Q. If you had testified previously it was some weeks, would that be the best of your memory?

A. That sounds reasonable. Yes.

Q. Earlier there was a memo referred to from Lionel

1 Barrett's office where you had stated that you would call
2 your, quote, funding source.

3 A. Uh-huh.

4 Q. Why was the term funding source used as opposed to
5 the name Boyd?

6 A. I don't know why.

7 Q. Do you know whether or not Mr. Jones ever told you
8 not to refer to Mr. Boyd directly?

9 A. I don't remember. I don't remember.

10 Q. You don't remember one way or the other?

11 A. No.

12 Q. You don't know whether or not Mr. Boyd obtained
13 the \$5,000 from friends or other folks or whether it was
14 solely from him?

15 A. I don't know. I have no idea where he got it. I
16 took it and got the money order.

17 MR. BAKER: That is all, Your Honor.

18 THE COURT: Anything else?

19 MR. MACLEAN: Nothing further, Your
20 Honor.

21 THE COURT: Ms. Mann, has anyone
22 threatened you to get you not to testify here today?

23 A. No, sir.

24 THE COURT: Has anybody suggested any
25 harm would come to you?

1 A. No.

2 THE COURT: Can you explain why you were
3 apparently attempting to avoid a deposition and
4 attempting to avoid to be here today?

5 A. Well, I wasn't trying to avoid it. I didn't have
6 a subpoena and my husband and I discussed it and as long
7 as I didn't have a subpoena then -- once I got one, I
8 would come.

9 Like I say, we were trying to just put it
10 behind us is all.

11 THE COURT: It's a serious matter to evade
12 federal subpoenas. I am not going to take any action at
13 this time because you are here -- and I thank you for
14 being here. You just need to recognize that serious
15 results can follow from evading federal subpoenas.

16 But there is no need for me to do
17 anything at this time and I am not aware of anything I
18 will do at a later time.

19 I want to impress upon you the need when
20 a federal subpoena arrives it is a serious matter that
21 needs attention. You can't just avoid it by saying he is
22 in the house and received service at your house.

23 But I do want to commend you for being
24 here today and doing your duty by testifying pursuant to
25 the order issued.

1 Anything else of this witness?

2 MR. MACLEAN: No, Your Honor.

3 MR. BAKER: No, Your Honor.

4 THE COURT: You are done. You are free to
5 go.

6 Mr. Mann, thank you for being here during
7 your lunch hour and for inviting your wife to attend. I
8 appreciate you arising to the occasion.

9 You are free to leave, too.

10 All right. Have we completed the
11 witnesses we are going to call for the day?

12 MR. MACLEAN: Yes, Your Honor.

13 MR. BAKER: Yes, sir.

14 THE COURT: As I understand it the state
15 doesn't intend to call any witnesses today.

16 MR. BAKER: That's correct.

17 THE COURT: I should say the respondent.
18 I am sorry. Ricky Bell does not intend to call any
19 witnesses today.

20 MR. BAKER: I haven't talked to Mr. Bell
21 directly.

22 No, sir, we don't intend to call any
23 witnesses.

24 THE COURT: As I understand it the case is
25 completed except for two witnesses.

1 MR. REDICK: That's correct.

2 THE COURT: When are we going to know for
3 sure whether we have two witnesses?

4 MR. REDICK: I am representing to the
5 court that I have been advised by those witnesses they
6 will be here Friday afternoon.

7 THE COURT: We will proceed that way. I
8 want to make sure I keep my word to Mr. Baker. I told
9 him that if any of those witnesses raised new matters
10 that he didn't anticipate that he would need to call
11 some rebuttal witness and that I would fully consider
12 that and make every effort to make sure he wasn't
13 sandbagged.

14 I am not accusing the petitioner's counsel
15 of sandbagging here.

16 Since we are taking two people out of
17 order, Mr. Baker, I made that commitment to you. Based
18 upon my current expectation what these witnesses will
19 say, I don't think that will arise. We had that
20 discussion and I am not sure if it was in camera or not.
21 I do recall that circumstance.

22 Anything else we need to take up today?

23 MR. MACLEAN: I don't believe so, Your
24 Honor.

25 MR. BAKER: I have one other exhibit. Let

1 me consult with counsel. They may have put this in.

2 Your Honor, there was some discussion
3 on Mr. Zimmermann's testimony about a contempt thing.
4 I don't recall the judge now. Your Honor will recall
5 that --

6 THE COURT: This is about the \$25
7 dispute?

8 MR. BAKER: I have the court documents on
9 that handed to me this morning. I was going to submit
10 that as an exhibit to the Court.

11 THE COURT: Any objection to those
12 documents?

13 They will be admitted. Hearing no
14 objection, we will mark it for you as 15. I can't
15 remember exhibit numbers today.

16 MR. MACLEAN: My notes --

17 THE COURT: Defendant's Exhibit 15.

18 MR. BAKER: That is what we have, Your
19 Honor.

20 MR. MACLEAN: Thank you.

21 THE COURT: Any other housekeeping
22 matters?

23 MR. BAKER: I don't believe so, Your
24 Honor.

25 MR. MACLEAN: No, Your Honor.

1 MR. REDICK: No, Your Honor.

2 THE COURT: I signed an order to have Mr.
3 Rahman produced for the hearing on Friday. So that has
4 been done. Otherwise we will stand in recess on this
5 matter until -- I said one o'clock before. I don't know
6 what I said on the order. One o'clock on Friday.

7 If I need to push that back a little bit,
8 I will let you know. One o'clock on Friday.

9 (Whereupon, the Court was in recess.)

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February 20, 1998

THE COURT: All right. Mr. Redick and Mr. MacLean, do you have two witnesses today, and which order and do any of them need to be in camera?

MR. REDICK: No, Your Honor, I think we can present our proof in open court.

THE COURT: All right. Who would you like to go forward with?

MR. REDICK: Your Honor, our first witness will be Dr. Michael Blankenship. I would like to address the court about that before I call him as a witness.

THE COURT: All right.

MR. REDICK: We prepared an affidavit, Dr. Blankenship's affidavit with his resume, copies of studies he has conducted about which he would testify with relevant excerpts from the study, a portion of the trial transcript, of the sentencing instructions, and we have made this as a package.

THE COURT: Does Mr. Baker have it?

MR. REDICK: Yes, he has a copy of it. We told him before the hearing, Your Honor, that our intentions are this. We assumed that the Court considers this to be an offer of proof.

THE COURT: That's right.

MR. REDICK: We are prepared to submit

1 this affidavit with these appendices. We have Dr.
2 Blankenship in the courtroom. He is available to be
3 examined by the Court, cross-examined by the state. He
4 is available to be examined on direct by us.

5 But we are willing to offer this affidavit
6 as his testimony unless the Court or the respondent wants
7 to examination him as a witness.

8 I would also say, Your Honor, about this
9 testimony, that this testimony is being offered to
10 demonstrate there was a reasonable probability that the
11 jurors in this case believed from the instructions that
12 they received that they would have to be unanimous
13 concerning mitigating circumstances in this case.

14 The proof that we offered through Dr.
15 Blankenship was offered on the subject of ineffective
16 assistance of counsel to this extent. It is our position
17 that during voir dire, during a submission that never
18 occurred, a submission of offered instructions by the
19 defendant to the court and during closing argument to the
20 jury that Mr. Barrett should have addressed some of these
21 issues and his failure to do so was ineffective on his
22 part.

23 And the evidence that Dr. Blankenship
24 would produce indicates the prejudice as a result of his
25 failure to do this.

1 So, it is being offered for these two
2 purposes. But the sum of the method of presentation is
3 that we are prepared to submit it by affidavit.

4 THE COURT: All right. You are offering
5 it for the question of the unanimous verdict regarding
6 mitigating circumstances, issues you identified, and you
7 are offering it for the ineffective assistance of counsel
8 issue because counsel, in your view, did not offer
9 appropriate jury instructions and didn't voir dire the
10 jurors on this particular issues.

11 Did I have it right?

12 MR. REDICK: And didn't argue to the jury
13 about its obligations under the law.

14 THE COURT: The closing argument?

15 MR. REDICK: Yes, at the sentencing stage.
16 Those three things?

17 THE COURT: Voir dire and closing argument
18 and jury instruction submittal?

19 MR. REDICK: Correct.

20 THE COURT: Mr. Baker, under our local
21 rules the court has the ability to allow an expert
22 witness to offer their direct testimony -- other than a
23 medical expert -- to be reduced to writing and a copy
24 thereof being served on opposing counsel, it says five
25 days before trial, and then essentially the way that

1 works is then the witness is available for
2 cross-examination.

3 For those of us who appeared before Judge
4 Morton, that wasn't the exception necessarily, that is
5 how it was done. You may or may not have had this for
6 five days. But you would be entitled to examine the
7 witness if you so chose, and if you have any objection to
8 this being offered by affidavit, let me hear you and I
9 will make a decision.

10 MR. BAKER: With the understanding it has
11 been presented simply as an offer of proof, we don't
12 object to proceeding like this with the affidavit.

13 THE COURT: All right. Well, that is the
14 way we started down this road. It would be an offer of
15 proof regarding whether the jurors have to be unanimous
16 regarding mitigating circumstances, because the Court
17 ruled on that in this issue based upon motions for
18 summary judgment.

19 To the extent that it is being offered
20 about ineffective assistance of counsel, that issue is
21 alive and well, whether counsel is ineffective. I think
22 that has been the heart of the testimony that I have
23 heard, versus pros and cons. It is being offered, as I
24 understand it, for those purposes.

25 Do you have any objection to calling the

1 witness and see if he adopts his affidavit and then you
2 have an opportunity to cross-examine him?

3 MR. BAKER: No, Your Honor.

4 THE COURT: Do you want to examine him on
5 the ineffective assistance issue?

6 MR. REDICK: Your Honor, I don't have any
7 questions to ask him about ineffective assistance of
8 counsel other than what is in the affidavit. He won't
9 comment on counselors' performance, just the results of
10 the studies.

11 MR. BAKER: It would be my
12 understanding -- this is the first I heard of it being
13 offered for anything other than the instructions.

14 I still don't see any need for
15 cross-examination since it is basically a jury study.

16 I would raise an additional objection to
17 relevance as to that testimony. The Court has held there
18 was no errors so I don't see how counsel can be
19 ineffective in this regard.

20 I would raise that relevancy objection.

21 THE COURT: We will proceed this way then.
22 The affidavit of Mr. Blankenship is admitted into
23 evidence as if he were testifying from the stand. When I
24 say admitted, it is admitted initially as the offer of
25 proof on the unanimous jury issue.

1 So, I guess it is admitted is not really
2 the right word. His testimony is allowed for purposes of
3 the offer of proof. But it is otherwise excluded on that
4 particular issue.

5 On the issue of ineffective assistance of
6 counsel, the testimony of Mr. Blankenship is accepted as
7 if he testified as stated in his affidavit; that the
8 objection raised by Mr. Baker as to relevance, I am going
9 to take it under advisement until I read it.

10 I have got to read the affidavit and make
11 a determination in that regard. But in terms of getting
12 the affidavit and what his testimony would be in the
13 record, it is in the record and the relevancy objection
14 is reserved on the ineffectiveness issue and unanimous
15 jury issue. It's in the record as an offer of proof.

16 I think that takes care of that unless I
17 misstated something.

18 MR. REDICK: No, Your Honor. I would add,
19 however, on the relevance question that I would just like
20 to state our position.

21 Our position is that we submitted this
22 unanimity issue to the Court on a motion for summary
23 judgment relying on undisputed facts in the existing
24 record. The Court ruled adversely.

25 We are now bringing to the Court's

1 attention facts that we submit may be disputed that are
2 relevant to the Court's finding that there was a
3 reasonable probability that the jurors did not
4 understand what the law required of them concerning
5 unanimity of their verdict.

6 So, we are just submitting that it is
7 relevant on that determination.

8 THE COURT: All right. Thank you. Mr.
9 MacLean.

10 MR. MACLEAN: Your Honor, could we have
11 that marked as Exhibit 135.

12 THE COURT: Yes. Regarding exhibits, now
13 that we are on that -- I am trying to use my time wisely.
14 We have been putting all the exhibits into binders so we
15 don't lose them. I can make reference to them with some
16 degree of ease.

17 I may have overlooked something but I
18 don't believe we have an Exhibit 109.

19 MR. MACLEAN: That's correct, Your Honor
20 we do not.

21 Your Honor, I have prepared a list of
22 exhibits which I was going to submit to the court at the
23 conclusion of today so you can have at least our list. I
24 have given a copy to Mr. Baker, and handwriting any
25 additional exhibits in.

1 THE COURT: That can be helpful to make
2 sure the record is complete.

3 MR. MACLEAN: I have also asked my
4 paralegal, Ms. Williams, who is in the court to consult
5 with the Clerk of the Court at the conclusion of the
6 hearing to make sure we are straight on all the exhibits
7 and how they are numbered.

8 THE COURT: Mr. Baker, I would ask you to
9 have a conversation with Ms. Bush, too, to make sure we
10 have all your exhibits, too. I would hate you to labor
11 long and hard for only me not being able to find it.

12 MR. BAKER: I received the petitioner's
13 exhibit list, that I will just make one comment on.

14 Respondent Exhibit 15, Zimmermann contempt
15 order and appellate court order, I don't believe that
16 order was a contempt order. Whatever that is worth. We
17 don't have to change it.

18 THE COURT: I am going to look at Mr.
19 MacLean's list not as substantive evidence. This is just
20 a checklist to see if I have misplaced a document.

21 So, any objections regarding his
22 characterizations won't be necessary for me to resolve.
23 I won't be deciding the case based upon how he has
24 characterized in one sentence what the evidence means.

25 Mr. Redick.

1 MR. REDICK: Your Honor, could we then
2 excuse Dr. Blankenship?

3 THE COURT: He is free to go. Mr. Baker,
4 any reason --

5 MR. BAKER: Not for cross-examination.

6 THE COURT: Have a safe trip back to east
7 Tennessee.

8 DR. BLANKENSHIP: Thank you, Your Honor.

9 THE COURT: What is next?

10 MR. REDICK: Dr. Ray Winbush I think is
11 outside.

12 THE COURT: All right. Let's see if we
13 can summon him in here and we will have a discussion.

14 Welcome, Mr. Winbush. Step forward and
15 raise your right hand, please.

16 (Whereupon, the witness was duly sworn.)
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EXAMINATION OF RAYMOND WINBUSH

BY MR. REDICK:

Q. You are Dr. Raymond Winbush, is that correct?

A. Yes.

Q. Dr. Winbush, you were educated in college at Oakwood College in Huntsville, Alabama, received a BA in psychology, graduated Cum Laude?

A. Yes.

Q. During the year 1968 you were at the Summer Study Program at Harvard University?

A. Yes.

Q. '69 at the Summer Studies Program at Yale University?

A. Yes.

Q. In 1973 you got a master's degree in psychology from the University of Chicago, is that correct?

A. That's correct.

Q. Majoring in clinical psychology with a minor in sociology?

A. Right.

Q. In 1976 you received your Ph.D. in philosophy and psychology at the University of Chicago, is that right?

A. Doctor of philosophy in psychology, right.

Q. And what was your doctoral dissertation on?

1 A. Identity formation in black adolescents. How they
2 achieved it.

3 Q. Now, from 1973 to 1977 you were employed at
4 Oakwood College as assistant professor in social work,
5 black studies and urban studies, is that right?

6 A. Yes.

7 Q. In 1977 through 1980 you were an associate
8 professor in psychology at Alabama A&M University?

9 A. Yes.

10 Q. Also coordinator of clinical psychological masters
11 program?

12 A. I was.

13 Q. In the summer of '80 you were a scholar resident
14 at Alabama Center of Higher Education, is that right?

15 A. Yes.

16 Q. From '80 to '95, assistant professor of human
17 development counseling at Vanderbilt University?

18 A. Yes.

19 Q. From 1984 to 1985 you were a vice president for
20 corporate research at United Press International, is that
21 right?

22 A. Yes.

23 Q. And from 1985 to 1986 you were vice president for
24 corporate research at Focus Communications, Incorporated,
25 FCI?

1 A. Yes.

2 Q. From 1989 to 1990 you were vice president of
3 minority affairs in human relations at Cleveland State
4 University?

5 A. Yes.

6 Q. From 1986 to 1995 at Vanderbilt University you
7 were assistant provost director of the Joseph Johnson
8 Black Cultural Center, is that right?

9 A. Yes.

10 Q. From 1994 to 1995 at Vanderbilt University you
11 were an associate professor in the practice of human
12 development and adjunct professor of psychology, is that
13 right?

14 A. Yes.

15 Q. From 1995 to the present day you have been at Fisk
16 University as director of Race Relations Institute and
17 professor of social sciences, is that right?

18 A. Yes, sir.

19 MR. REDICK: Your Honor, I have a copy of
20 Dr. Winbush's curriculum vitae I would like to offer in
21 evidence as Exhibit 154.

22 THE COURT: All right. That will be
23 admitted as 154.

24 Q. Dr. Winbush, looking at page four, bottom of your
25 curriculum vitae, you have had various memberships in

1 community activities listed there beginning at the bottom
2 of the page, boards of directors and committees involving
3 various things having to do with African-American issues
4 and black culture, is that right?

5 A. Yes.

6 Q. You have traveled, conducted research in Ghana,
7 Honduras, France and Jamaica, is that correct?

8 A. Yes.

9 Q. You consulted at places such as the University of
10 London, School of Education, Odyssey Television Network,
11 the governor's cabinet for the state of Tennessee,
12 Florida A&M University, Alcohol Drug and Mental Health
13 Association in Columbus, Ohio, Tennessee Alcohol and Drug
14 Abuse Counsel, the Department of Education.

15 Is that the State Department or federal
16 department?

17 A. The federal department.

18 Q. The Memphis Public School Systems, Tennessee
19 Commission on Children and Youth, and various other
20 universities and institutions?

21 A. Yes.

22 Q. You have a list on page seven and eight of your
23 curriculum vitae of grants funded for research and
24 training and various things having to do with
25 African-American culture, is that right?

1 A. Yes.

2 Q. Now, I understand that looking at page eight in
3 your curriculum vitae under major publications and
4 presentations there are several things listed there on
5 over to the following page, articles, books, chapters and
6 books and things you have authored.

7 I look at the second item listed there
8 Cinque's Children, Raising Black Men in America.

9 I ask if you can describe to the Court
10 what that is?

11 A. Well, it's a book I am currently authoring, a book
12 that talks about some of the development challenges that
13 black boys face being reared in the United States and
14 some of the issues unique to them as opposed to their
15 white boys.

16 Q. And looking further on down there to the 10th
17 item, there is an article there entitled Growing Pains,
18 explaining adolescents violence with developmental
19 theory.

20 Can you tell us what that is?

21 A. That is a chapter I published about 10 years ago
22 and I was saying in that chapter that there is some
23 convincing -- given the circumstances -- that children
24 are raised in America that you can actually predict
25 adolescent violence and developmental issues based upon

1 their early exposures to violence in their childhood.

2 Q. Now, Dr. Winbush, in this case you have had a
3 chance to meet Abu-Ali Rahman?

4 A. Yes.

5 Q. You met him twice?

6 A. Yes.

7 Q. How much time would you say you spent with him
8 total?

9 A. I guess all total, three hours, three and a half
10 to four hours. Something like that.

11 Q. You have had an opportunity to review the social
12 history prepared by Dr. Diana McCoy who testified in this
13 court?

14 A. Yes.

15 Q. You have had an opportunity to read the evaluation
16 and diagnosis by Dr. Sadoff in his report?

17 A. Uh-huh.

18 Q. And Dr. McCoy's report of her evaluation and
19 diagnosis of Abu-Ali?

20 A. Yes.

21 Q. You have had an opportunity to review a videotape
22 of a hypnosis session with Abu-Ali, that's correct?

23 A. Yes.

24 Q. During the course of reviewing these materials and
25 spending time with Mr. Abdur' Rahman have you formed any

1 opinions about his development and development of his
2 identity?

3 A. Yes, I have.

4 Q. Let me ask you this. If you were to identify
5 anything that you focused your attention on during your
6 education and during your employment, what would you say
7 that has been?

8 A. I would say that it is -- I have always been
9 fascinated, I guess, with my dissertation research how
10 African-Americans and more recently how African-American
11 men develop their sense of self in a society that often
12 times militates against like healthy formation of self.

13 So, I also focused on the idea of
14 identity. How can Clarence Thomas and Michael Jackson
15 come out of society like this?

16 Q. Do you see in this case, based upon what you
17 reviewed and the meeting you had with Mr. Abu-Ali,
18 questions that are peculiarly bound up in racial
19 matters?

20 A. Yes.

21 Q. When we refer to African-American developmental
22 issues, can you generalize what we are talking about that
23 is unique to African-Americans in America?

24 A. There is a lot of research that shows development
25 of black boys who become black men and black girls that

1 become black women, they are not the same as if you look
2 at a white sample.

3 We know, for example, Joyce Lanen's
4 research on women that black girls learn to nurture and
5 take care of much earlier their children, et cetera, and
6 much earlier ages because much of the responsibility for
7 rearing the children are placed on black girls.

8 We know black boys on average have a more
9 early exposure to violence, violence is always at the
10 periphery of black boys in society. That being middle
11 black, poor class or what.

12 We know that black boys also have, if an
13 early racial identity is not formed, that we can kind of
14 predict these people will not be -- they will have issues
15 as they grow older in their lives.

16 Q. Do you see evidence that Abu-Ali is racially
17 conflicted?

18 A. Yes.

19 Q. What does that mean?

20 A. Much of what I read is how his father was very
21 racially conflicted. His father, I feel just from
22 reading the evidence, fits the pattern of a black male
23 that really did not like himself.

24 His father by his own admission was a
25 very dark skinned black man and clearly had issues about

1 him being a dark skinned black man.

2 I asked Mr. Ali on several occasions
3 whether or not he remembered his father saying anything.
4 Since he had grown up like most of us did during the
5 civil rights era, did he ever talk about Martin Luther
6 King or Malcolm X or anything. He said no.

7 I think that early absence of not having a
8 racial identity as a black man or black boy in society
9 led to other issues as he grew older.

10 Q. Now, you read the record concerning his history of
11 abuse and neglect visited upon Mr. Abdur' Rahman.

12 How would you, based upon your experience,
13 categorize the severity of this abuse and neglect?

14 A. It is singularly the worst case of abuse I have
15 come across in 25 years being an academic psychologist.
16 This ranges from the projects of Chicago all across this
17 country.

18 I can't even in my memory remember
19 anything that remotely comes close to some of the things
20 I read.

21 Q. What are the implications -- let me ask you this
22 question.

23 Of course, he had two parents that raised
24 him up until his later adolescence. We have heard a
25 history of abuse by the father and I guess it is far to

1 say neglect by the mother.

2 How would you describe the implications of
3 this history?

4 A. Well, it was also an act of neglect on the part of
5 the mother. It was clear that Mr. Ali's mother knew he
6 was being severely beaten -- I think is a mild term --
7 tortured by his father both physically and
8 psychologically and then mixed with the idea if you add
9 to that there was no sense who he was as a young black
10 boy growing up in the mid 1950s in this country, it
11 created an incredible vacuum filled with a variety of
12 other things later on in his life.

13 You know, there were several statements
14 that Mr. Ali made relative to just wanting to have
15 comfort from the mother. The father bullying goes on so
16 many levels and not really -- the mother kind of ignoring
17 the cries for help that Mr. Ali had at a very early age.
18 This is at the age of four or five years old.

19 Q. Was there any evidence in the record referring
20 back to the father's distaste or dislike for his own
21 racial heritage, any evidence in the record about the way
22 he addressed Abu-Ali that is evidence of that?

23 A. He consistently referred to him as nigger or
24 little nigger, which again in a historical context in the
25 1950s that was degrading then as it is now. It was

1 particularly degrading during those periods.

2 He clearly wanted to please the white
3 officers because he was in the Army and did everything
4 that -- almost bent over backwards. Research has shown
5 many --

6 MR. BAKER: Your Honor, I raise an
7 objection.

8 Unless there is a foundation, I see
9 nothing that indicates that these matters he is raising
10 about the father, particularly with regard to the
11 father's motivations and attitudes toward race -- unless
12 there is some foundation for those questions, I move to
13 disallow it.

14 THE COURT: I am going to sustain the
15 objection as it relates to whether the father was trying
16 to please or not please military officers. I have not
17 seen anything about that. I do recall evidence in the
18 record about the father using degrading racial terms
19 toward his own children.

20 But if we are going to get far afield on
21 what the father has done, I don't think we have a lot of
22 evidence in the record and, of course, Mr. Redick, you
23 are free to bring that out if there is a foundation.

24 Q. What was the frequency, Dr. Winbush, of these
25 racial epitaphs he would hurdle at Abu-Ali based upon

1 your review of the record and information you have?

2 A. Well, they were very regular. It is clear from
3 the record that the fear that Mr. Ali had of his father
4 took the form of avoiding his father in terms of running
5 away on several occasions.

6 There was one occasion, for example, as
7 they were driving up to the house, Mr. Ali reported in
8 the record that he knew that he was going to be beaten
9 for some minor infraction so he ran and hid.

10 The term nigger was used constantly. It
11 was used in adolescence growing up when he got himself in
12 trouble. He said you got yourself in trouble, nigger,
13 you get yourself out.

14 Q. In your review of the record, did you see any
15 evidence that this abuse and neglect had any sort of
16 sexual characteristics?

17 A. It did. There was one incident that particularly
18 stands out in my mind where Mr. Ali's penis was tied up
19 by his father, placed in a closet.

20 While there is no direct reference to him
21 being sexually abused by his father it is clear that his
22 father abused him with sexual intentions in mind. He was
23 always -- like I noticed several cases or instances where
24 his genital region was made an object of abuse by his
25 father.

1 You know, I know that is the kind of
2 pattern behavior when there may be some terrible thoughts
3 in the mind of the parent toward the child, he may not
4 even be sure it was his own child. I think that is
5 another theme.

6 It is clear that because of Mr. Ali's
7 color, that he was much lighter than his father, his
8 father wasn't sure whether or not Mr. Ali was even his
9 son, based upon the record of his mother's relations with
10 other men.

11 I think his father wasn't quite sure about
12 that. That may have represented to the father that Mr.
13 Ali was like the product, if you please, of a
14 relationship between another man and his wife.

15 Q. Did you find any significance in the fact that we
16 have a history of abuse here both against the mother and
17 the son who are both lighter skinned than the father?

18 A. That is characteristic of people that are full of
19 self-hatred.

20 Q. Is this abuse and neglect that you have seen in
21 this record consistent with an early manifestation of
22 mental disease?

23 A. Oh, yes, absolutely. I guess one of the things
24 that surprises me is that despite this early -- again,
25 abuse is too mild a term. It is really almost torture.

1 That nothing more happened to Mr. Ali in his life -- it
2 would be predictable if I had a child his age and given
3 the environment he was raised in that you could almost
4 predict there would be anything from borderline behavior,
5 schizophrenia that would later on manifest itself in his
6 adolescence.

7 Q. Did the information you reviewed concerning the
8 lives of the other siblings in that family, Sylvia and
9 Mark, inform you at all?

10 A. It did. Mark committed suicide, his brother
11 did. There are behavioral problems with his sister as
12 well.

13 One of the siblings testified that Mr. Ali
14 received the worst part of the abuse. So, yes, it is
15 throughout the entire family.

16 Q. Now, having reviewed the diagnosis and evaluations
17 of Dr. Sadoff and Dr. McCoy as reflected in their
18 reports, do you concur with their diagnosis?

19 MR. BAKER: I object to that. I don't
20 believe he has done any psychological testing or anything
21 of that nature in the case. I don't think he is here as
22 a clinical psychologist or forensic psychologist.

23 I object to that line of questioning with
24 this witness.

25 THE COURT: Mr. Redick, what do you say

1 about that?

2 MR. REDICK: Your Honor, I submit he is in
3 a position to form an opinion. He spent several hours
4 with Mr. Abdur' Rahman and reviewed the social history
5 which includes the diagnoses conducted by the witnesses
6 that have testified in this case and other people
7 throughout his life. It includes reports of facts upon
8 which diagnoses are made.

9 The question is whether or not he concurs
10 with another diagnosis.

11 I think he is qualified and also has
12 sufficient information about this case to offer an
13 opinion about that.

14 THE COURT: I will let him answer the
15 question.

16 Go ahead.

17 A. I agree with it. The qualification I would have
18 on it, if you look at the entire diagnoses that Mr. Ali
19 received over the years, it is fairly common that black
20 males get diagnosed more severely than often times they
21 really are.

22 I think his latest psychological
23 evaluation by the doctor is probably the closest one I
24 would agree to as opposed to some of the older ones I saw
25 dating back 15 or 20 years.

1 THE COURT: Let's get focused. Are we
2 talking about post traumatic stress syndrome --

3 A. Yes.

4 THE COURT: -- or borderline personality
5 disorder?

6 Q. We have two. One is borderline personality
7 disorder and the other is post traumatic stress
8 disorder?

9 A. I would agree with the PTSD more than the other.

10 THE COURT: Why don't you lay a
11 foundation, Mr. Redick, why his opinion about that should
12 be respected.

13 Why is he qualified to make a post
14 traumatic stress disorder opinion?

15 Q. Upon what do you base your conclusion that you
16 concur in this diagnosis?

17 A. Well, I didn't make the diagnosis. I concur with
18 it.

19 It is based upon what I have seen over the
20 years. Even the material I am writing right now about
21 what black boys go through in terms of experiencing
22 violence at very young ages. It is often times amazing
23 how we see like in Northern Ireland, for example, young
24 children that see violence at very young ages. We bring
25 them to this country and there are programs because of

1 the environment they witness every day of bombs and
2 problems between Catholics and Protestants.

3 We don't use that same thing with young
4 boys that go through the inner-city, in a country
5 relative to seeing violence in terms of drugs and people
6 being killed every day.

7 So, I think it is a one on one analogy of
8 people being in a war zone around the world and what goes
9 on every day in inner-city black communities in the
10 country as well as what goes on in cases like with Mr.
11 Ali where there is this history of incredible traumatic
12 abuse visited upon him by his father.

13 Q. Have you seen other diagnosed cases of post
14 traumatic stress disorder?

15 A. Yes, many. With young boys, in fact, yes, and
16 young adult men.

17 Q. Now, you have testified that Mr. Abdur' Rahman
18 when he was a child didn't receive any training from his
19 father.

20 THE COURT: Let's go back. Borderline
21 personality disorder is not a mental illness and he
22 said that post traumatic stress disorder is a mental
23 illness.

24 Why is this witness qualified to testify
25 as to whether somebody has a mental illness or not? Dr.

1 Sadoff is a medical doctor.

2 MR. REDICK: Your Honor, a non-medical
3 doctor can testify as to a mental illness. A
4 psychologist can testify to mental illness. Dr. Winbush
5 is a psychologist.

6 THE COURT: I don't think you laid the
7 foundation that he has experience doing that. He may.
8 But I don't see the foundation for it.

9 MR. BAKER: In addition to what I
10 previously objected to, there is no indication that he is
11 an academic psychologist involved -- primarily involved
12 in racial issues, social and psychological issues. There
13 is nothing in the record that he has experience in a
14 clinical situation where he makes diagnoses. That is not
15 his field.

16 I think we are getting far afield with
17 what this witness is qualified and experienced to talk
18 about.

19 MR. REDICK: I would be happy to limit the
20 rest of his testimony to the subject of the
21 African-American issues and cultural heritage and
22 implications of social history we have in that regard.

23 THE COURT: I am not trying to limit that
24 testimony. I at this point don't believe the record has
25 been developed where he is qualified by experience or

1 training to give a diagnosis about mental illness.

2 If you can get him qualified, feel free
3 to do that. If you would like to pursue other avenues
4 that -- obviously you have more than one thing you want
5 to develop with this witness. You are free to do that.
6 You can choose.

7 Q. Dr. Winbush, given your testimony about the lack
8 of training for Mr. Abu-Ali concerning his racial
9 heritage and given the history we have here of abuse and
10 neglect and subsequent mental disease, what are the
11 implication of this combination?

12 A. Usually people that have a lack -- I want to be
13 very clear about this -- a lack of racial identity
14 development in young black boys, given a society that
15 will already traumatize them for simply being black men
16 in this society, you can predict they will be affiliated
17 with groups that talk a great deal about racial identity
18 formation.

19 It is throughout Mr. Ali's life, you can
20 see him joining groups like the American Indian movement,
21 SEGM group, a member at one time of the Black Panther
22 Party. He was trying to achieve the identity he didn't
23 have when he was very, very young.

24 The joining of the groups is almost like
25 cult-like rather than all of us joining groups. It is

1 particularly with young black boys who don't have a solid
2 racial identity formed within them, you see them joining
3 these groups at almost a phenomenal level. There is a
4 strong attraction to try to seek out who he is.

5 I think that is manifested throughout his
6 life with the groups he has joined.

7 Q. Given his race and given the light color of his
8 skin, does that give any predictability to the fact he
9 may have been the object of sexual assaults while in
10 confinement?

11 A. It does. The issue -- and this is of discussion
12 within the black community both casually as well as
13 formally -- is light skinness and slight of stature in
14 the 1970's when he was incarcerated would make him an
15 object of sexual abuse, especially in a prison situation
16 where there are a lot of black men that have racial
17 identity problems in the first place.

18 He could be seen as being more desirable
19 because of his light skinnedness. He would be
20 effeminized, if you want to put that way.

21 I think that is something that runs in the
22 black community even in terms of beauty within the
23 community. It is still here.

24 Q. Given this history and everything that we have
25 already talked about Abu-Ali, what significance to you is

1 the fact that he has this obsession with protecting
2 children and caring for children?

3 What does that mean?

4 A. Because he wasn't protected himself. It was for
5 the child of the man. I think Mr. Ali wanted to protect
6 children in ways he wasn't protected. He was -- that is
7 something again that runs throughout his life, being very
8 tender, trying to protect children, saying good things
9 about children. Many of the women he was involved saying
10 he wanted a family. Because he never had that sense of
11 protection when he was a child.

12 I think he said in the documents I wrote
13 that his father wasn't a father, he was a man, my mother
14 wasn't a mother, she was a woman.

15 Man and woman merely describes biological
16 state. Mother and father describes issues of nurturing.

17 I think he wanted to be the father to
18 these children that he had never experienced himself.

19 Q. What about his inordinate interest in
20 identification with animals?

21 A. Well, that was interesting. You know, I think
22 when he was younger -- again based upon what I read -- I
23 think the anger he had toward his father could be
24 expressed. The psychologist says anger turns into rage.
25 I noticed in an early age he started identifying with

1 animals, on several occasions he actually growled like a
2 wolf and other things of that nature.

3 I think that was an expression of the
4 absolute anger but fear of expressing it toward his
5 father in the situation he was in.

6 Animals have to be protected like children
7 in one very broad sense. I think Mr. Ali kind of
8 growling like -- we can joke about it -- when we are
9 angry we growl. We grit our teeth. I think that was
10 expressed in Mr. Ali's very early age because he
11 identified with them.

12 He would isolate himself in the Army base
13 and would go into the woods. I am sure he saw animals
14 there and there probably was a certain amount of freedom
15 he saw in the animals that he had not experienced in his
16 our rearing.

17 Q. Given all the circumstances that you previously
18 referred to in your testimony, would Abu-Ali be someone
19 who is subject to influence, subject to manipulation?

20 A. Yes. I mean, very much so. Because of what had
21 occurred in a family, that he was very dependent on the
22 whims of a very vicious father and not being able to
23 receive comfort from kind of a psychologically absent
24 mother, he was wanting to be told what to do. Because he
25 had been told what to do almost all his childhood. And

1 it continued in groups that are very religiously based or
2 form around identity, you know, to be authoritarian.

3 He came from a tortured background where
4 he was told what to do. He would be attracted to groups
5 that told him what to do.

6 Q. Would this type person ever have difficulty with
7 confrontation?

8 A. They would try to avoid confrontation as much as
9 they could. If they had to deal with it they would
10 probably be confronted with an absence of impulse
11 control.

12 It depends on the situation. I think he
13 would be willing to confront if he saw like, for example,
14 a child that needed to be protected, he would be more
15 willing to confront in a situation like that or if he saw
16 himself in harms way, depending on the circumstance.

17 Q. If there was a moment in the trial where Mr.
18 Abdur' Rahman was -- at the very beginning of the
19 cross-examination by Assistant District Attorney General
20 John Zimmermann -- in which Mr. Abdur' Rahman identified
21 himself that he was no nigger on the street, what was he
22 saying, in your opinion?

23 MR. BAKER: I object to that as
24 speculation.

25 THE COURT: I will let him answer and I

1 will decide whether it is speculation or not.

2 There are phrases in our society that
3 sometimes are terms of art and to the extent you want to
4 explore that, feel free to and then I will make a
5 decision.

6 Q. Do you remember the question?

7 A. Why don't you repeat it.

8 Q. There was a moment in the trial in which -- in
9 response to confrontation from Assistant District
10 Attorney General John Zimmermann -- which he testified
11 himself in that he was no nigger on the street.

12 A. I think this again is linked in how everybody in
13 his life told him what he was.

14 You know, on one of the visits he kind of
15 gestures in this pile of papers, looking at his history.
16 He said, I am not what many people have said I am,
17 including being a nigger on the street. The stereotype
18 being some kind of drug dealer or criminal.

19 You know, has Mr. Ali committed criminal
20 acts? Yes. I think on the other thing is, he a criminal
21 being stereotyped as being somebody that would be that
22 typical nigger on the street.

23 I think that is what he was talking about
24 when he made that statement to the lawyer.

25 Q. How would you assess his sense of conscious, his

1 sense of social justice?

2 A. I think it is very strong despite many things he
3 has done. He always -- this is again typical of black
4 boys that don't have solid identity formation. They are
5 groping, searching for it.

6 I think the sense of right and wrong was
7 always there. It was sometimes misjudged. If you look
8 at his affiliation with the American Indian movement it
9 was always saying we have got to protect somebody, we
10 have got to take care of this group that is helpless.

11 I think again it goes back to his
12 childhood as being -- not being protected.

13 Q. We have heard proof in this case of what you are
14 aware that he used marijuana and perhaps LSD at a
15 critical time in the commission of the crimes about
16 which this case concerns. Yet he described how his
17 motivation was to rid the community of drug dealers and
18 try to run off drug dealers and put them out of
19 business.

20 How do you rationalize this apparent
21 inconsistency?

22 MR. BAKER: Again, I object as to
23 speculation. I don't think this is his area of expertise
24 that he is here for. I don't know that any expertise
25 would justify an answer to that question.

1 THE COURT: Let me back up. On the no
2 nigger on the street point, I think I will allow the
3 answer to that question because it is in the context of
4 testimony regarding what this witness referred to as
5 identity development problems. I accepted it in that
6 regard.

7 Regarding reconciling the apparent
8 inconsistencies that Mr. Redick pointed out, I think this
9 witness is qualified to testify about how the
10 petitioner's views of social justice can be understood in
11 the context of the black community in Nashville.

12 I am going to let him testify about that.

13 I am not going to accept any legal
14 conclusions or conclusions about ultimate opinions,
15 whether that is consistent or inconsistent.

16 I think this witness can help with some
17 questions of context given his review of the records and
18 his expertise.

19 I will let him answer the question. Go
20 ahead.

21 Q. Do you remember the question?

22 A. Yes. Well, I look at when he started using or I
23 should say he started using years and years ago. It is
24 clear when he was with the American Indian movement he
25 used peyote.

1 My experience with several groups of the
2 Rastafarians of Jamaica that I did research 20 years ago,
3 is that there is no gap between using drugs for religious
4 and spiritual awakenings, if you please, and seeing
5 abusive drugs being given in the community.

6 The Rastafarians of Jamaica are one of the
7 most adamant people that hate drug runners and weed had
8 them out. Yet they will use it at religious ceremonies.
9 That is not an unusual thing.

10 If I had seen in his earlier childhood or
11 adolescence like drug running, that would be an
12 inconsistency. I see the early use of drugs as being
13 something more of a religious nature than anything else.
14 He dabbled in things like heroin and cocaine but got away
15 from that stuff.

16 Q. How would you characterize Abu-Ali's -- how would
17 you characterize him as a potential employee?

18 A. Well, I would hire him. I think I would say that
19 because I think if he had been in an environment or was
20 in an environment that nurtured and understood him as a
21 black man growing up in the latter part of the 20th
22 century in America, I think if he had that around him and
23 he could talk about that with somebody else, reading
24 books together or whatever, I think he would be a model
25 employee.

1 I think there is obviously evidence of
2 that in the record as well. There are several instances
3 he was a model employee.

4 So, I think he would be a very good
5 employee.

6 Q. What does the record reflect on his concerning the
7 increase or decrease of his propensity for violence as he
8 has grown older?

9 A. I think decreased. More recently at River Bend
10 there has been no evidence of violence. I think that
11 the violence was part of his environment and he struck
12 out against it in many levels, particularly in the
13 early 1970s with the murder conviction while he was in
14 prison.

15 I think that in more recent years he seems
16 to be more at peace with himself. I think in part it is
17 due to the fact that he became a Muslim which encourages
18 that, and I think that there has been no evidence in the
19 past few years about that.

20 MR. REDICK: That is all the questions I
21 have, Your Honor.

22 THE COURT: Mr. Baker.
23
24
25

EXAMINATION OF RAYMOND WINBUSH

BY MR. BAKER:

Q. Dr. Winbush, you are an academic psychologist, is that correct, and your career has primarily revolved around addressing social issues pertaining to African-Americans and other minorities in our culture?

A. Yes.

Q. You're not a practicing clinical psychologist or forensic psychologist?

A. No.

Q. You do not make diagnoses of patients?

A. I have in the past under supervision, yes. Primarily an academic psychologist.

Q. And are you licensed by any board to practice clinical psychology or forensic psychology?

A. No.

Q. You talked a little bit about the petitioner's background.

It is true he had a father and had a mother in the same household, is that correct?

A. He had a man and woman in the same household, yes.

Q. His father was a career Army man?

A. Uh-huh.

Q. Have you read the records, the school records

1 where the mother is described as being overly protective
2 and concerned for her son?

3 A. Yes, I read those.

4 Q. Yet you still say his mother was negligent in his
5 care even though she was overly protective of him?

6 A. I think, you know, there was a lot of diagnoses I
7 saw in records clearly -- when I think of overly
8 protective, I think of something much different than what
9 I read about his mother.

10 Q. Now, you also described him as being someone that
11 can be manipulated.

12 He also is someone that can lead as well,
13 correct?

14 A. How do you get to that?

15 Q. Well, we have at least one witness came in here
16 and described him as being a leader. The evidence from
17 this case indicates with regard to the crime that is
18 involved, he was basically planning and directing the
19 events.

20 You are aware of that?

21 A. No, I am not. Because my -- what I read was that
22 Allen Boyd -- I think that was his name -- that he was in
23 charge of that final episode.

24 I think the way I use the term leader, I
25 am talking about somebody like an Allen Boyd or somebody

1 that clearly takes charge of the situation and orders
2 people around, et cetera.

3 I just don't see any evidence of that in
4 the record.

5 Q. So, if the co-defendant and Norma Norman testified
6 at this trial it was the defendant, or petitioner who was
7 basically giving direction during the commission of these
8 crimes, you're not aware of that?

9 A. I would disagree with it.

10 Q. You also said that he has been an individual that
11 would try to avoid confrontation?

12 A. Under certain circumstances, yes.

13 Q. Of course, you have reviewed his records and it
14 indicates from a very early stage of repeated fighting in
15 school; as a matter of fact he was expelled for pulling a
16 knife on a teacher; he has been in youth offender
17 programs for violent acts; arrested and placed in federal
18 prison for violent acts.

19 Of course, there is the second degree
20 murder conviction you are aware of.

21 Certainly these don't seem to indicate a
22 person that is avoiding confrontations throughout his
23 life. do they?

24 A. You can call confrontation when somebody is
25 defending themselves, too.

1 I don't see any evidence -- the pulling of
2 the knife you mentioned earlier with the teacher, et
3 cetera, I saw Mr. Ali at a very young age being
4 victimized by a host of horrendous situations.

5 I think most of the confrontations I saw
6 were initiated after somebody had threatened him in a
7 variety of levels, threatened him about being raped in
8 prison, et cetera.

9 I think a more typical response is when he
10 ran away from his father on one incident that I remember
11 in particular and hid from him as a way of avoiding
12 confrontation and violence that he knew his father would
13 beat on him.

14 Q. So, you believe that his acts of violence were
15 essentially in defense of himself.

16 Is that your view?

17 A. In many cases, yes.

18 Q. Let's talk about the homosexual or sexual matters.
19 Of course, there is evidence in this case also that this
20 petitioner was a consensual participant in sexual acts in
21 prison.

22 You are aware of that as well, aren't
23 you?

24 A. Yes. I understand the issue about the situation
25 of homosexuality as well.

1 Q. You referred to portions of the petitioner's
2 testimony at his trial and described it as perhaps his
3 expression that he is not a criminal. I believe the
4 words were nigger on the street?

5 A. Uh-huh.

6 Q. Of course, if you look at this person's record,
7 isn't that exactly what you see, a long criminal history,
8 is that correct?

9 A. I think what Mr. Ali said that -- and I
10 interpreted it that way as well -- is the idea of like
11 having like a criminal mind, somebody who says that is
12 predatory, somebody who actively organizes and says we
13 are going to do X, Y and Z and plans this in a
14 premeditated way.

15 You mentioned the murder conviction. It
16 was second degree. It wasn't a first degree planned
17 murder. When he went to Mr. Stein's cell, I don't think
18 he went with intent to kill him. He went with protection
19 but didn't go there with the intent to kill him. I think
20 the court found that.

21 I think the idea of intention, at least
22 for me, plays or influences me a lot to believe he wasn't
23 this career criminal that I think is evidenced in this
24 record.

25 Q. So, his acts of aggravated assault, repeated acts

1 of misconduct in prison, the crimes involving this case,
2 you do not see those as a person that is a criminal?

3 A. I don't see that as a person -- because I have to
4 put that up against the times that there were long
5 periods of work history when he had an opportunity to be
6 committing criminal acts but he didn't. He was in a good
7 environment.

8 I can't take Mr. Ali out of the
9 environment I saw him in. All the acts I saw at least
10 indicated that there were incredible mitigating
11 circumstances where those acts were committed.

12 Q. He has been in prison most of his adult life with
13 the exception of, I believe, 1983 until 1986 when this
14 occurred.

15 Really he only had a very short period
16 outside of prison to even demonstrate a work ethic?

17 A. But there is also evidence in the record when he
18 was in certain prison situations, when he felt he
19 wouldn't be raped, that he was a model prisoner as well.

20 Q. So, you believe that the records in this case
21 indicate that he at times was a model prisoner?

22 A. Yes. There were times he got awards for having, I
23 think, something about the neatest barracks or something
24 like that. There were several instances like that.

25 Q. There are many instances of lying to the prison

1 staff?

2 A. Sure.

3 Q. Having contraband, including knives?

4 A. Uh-huh.

5 Q. Disruptive behavior, aggressive behavior. There
6 is all that. It is really hard -- you can't
7 characteristics this person as a model prisoner?

8 A. I didn't say model prisoner. I say there were
9 times he was. I think the times is when he felt the
10 environment he was in was safe and relatively free from
11 sexual violence toward him.

12 Q. He was released in 1983 on federal parole and
13 within three years he is arrested for this?

14 A. Uh-huh.

15 Q. We talked a little bit about the development of
16 African-American males in general.

17 You are certainly not testifying here
18 today that most African-American males would condone this
19 petitioner's behavior?

20 A. I don't understand the question.

21 Q. You have testified about African-American males in
22 general and some of their attitudes and being issues they
23 faced.

24 But certainly you're not saying that most
25 African-American males would condone this petitioner's

1 behavior and his record?

2 A. Oh, not at all. I also think they would
3 understand some of the circumstances that occurs in it as
4 well.

5 MR. BAKER: I believe that is all, Your
6 Honor.

7 THE COURT: Any redirect?

8 MR. REDICK: No, Your Honor.

9 THE COURT: Thank you, Dr. Winbush. You
10 may step down.

11 Any other evidence that needs to be
12 submitted before we consider the case submitted for the
13 Court for decision?

14 MR. BAKER: Your Honor, I had one matter.
15 I believe the parties were contacted by Dr. Craddock and
16 Dr. Craddock I believe told me he was sending a letter to
17 the Court.

18 THE COURT: Yes, I have gotten a letter
19 from Dr. Craddock and I signed an order, filed it in the
20 record and having the Clerk send a copy to each of you.
21 If you haven't received it, you will.

22 MR. MACLEAN: We have received it and we
23 are prepared to stipulate that would be his testimony and
24 we are prepared to allow the Court to consider it as
25 such.

1 THE COURT: Mr. Baker.

2 MR. BAKER: Yes, we talked about that and
3 we agreed to that.

4 THE COURT: Let me pull in my memory. My
5 memory is that he wrote and said the previous testimony
6 was that he wasn't to the courthouse with Cheryl
7 Blackburn was in error. I believe he attached a voucher
8 for reimbursement. That is what it looked like. After
9 seeing that he determined that he had been at the
10 courthouse, I guess. during the time of the trial.

11 MR. MACLEAN: Yes, I believe he was at the
12 trial on July 14th and 15th. I believe that is what his
13 time record reflected.

14 MR. BAKER: That's correct.

15 MR. MACLEAN: Which would be the second of
16 the two days of the guilt phase and the sentencing
17 hearing.

18 THE COURT: So, the parties are
19 stipulating he was at the trial on, did you say, the 14th
20 and 15th?

21 MR. MACLEAN: What we are stipulating to
22 is that his records reflect he was there, and we won't
23 contest that.

24 THE COURT: That stipulation is noted.

25 I commend Dr. Craddock for running down

1 the loose ends.

2 Any other evidence that need to be
3 submitted?

4 MR. MACLEAN: Two matters. First of all,
5 previously during Mr. Sumter Camp's testimony there was
6 introduced in evidence Exhibit 143, a copy of the statute
7 that is currently in effect allowing for services,
8 investigative or psychiatric services for capital
9 defendants under certain circumstances.

10 I have a copy of the statute that was in
11 effect in 1986/87. I would like to substitute that as
12 Exhibit 143. The language is the same that Mr. Camp
13 referred to in his testimony.

14 THE COURT: I am not sure the best thing
15 to do is to substitute it. But I will let you mark it as
16 an exhibit. Let's make it the next number.

17 MR. MACLEAN: 143 A?

18 THE COURT: All right. That is a good
19 solution.

20 MR. MACLEAN: And then finally, Your
21 Honor --

22 THE COURT: Ms. Bush, mark that 143 A.

23 MR. MACLEAN: Could I have moment so I can
24 mark all my things here.

25 Finally, Your Honor, we would like to

1 introduce as Exhibit Number 155 a copy of TCA 639-2-203,
2 the provision that covers sentencing for first degree
3 murder which was in effect in 1986 and '87.

4 THE COURT: That will be number 155. I am
5 not sure it is necessarily required to mark the law as
6 exhibits, since the Court determines what the law is.

7 It is helpful to at least know what you
8 believe the law was in 1986.

9 So, I accept both 143 A and 155 for that
10 purpose.

11 MR. REDICK: I have the trial exhibit list
12 we prepared that I would like to submit to the court
13 right now.

14 THE COURT: If you will hand that to Ms.
15 Bush.

16 MR. MACLEAN: Would you like an extra
17 copy?

18 THE COURT: Yes, if you have an extra
19 one.

20 MR. MACLEAN: I believe that is it, Your
21 Honor.

22 THE COURT: All right. Mr. Baker, how
23 about you?

24 MR. BAKER: Nothing further from the
25 respondent.

1 MR. REDICK: I would like to address the
2 court briefly.

3 THE COURT: Go ahead, Mr. Redick.

4 MR. REDICK: Judge, there has been some
5 conversation off and on in this hearing about how to
6 treat evidence that we have offered concerning proof that
7 should have been presented by counsel at trial in order
8 to satisfy the prejudice prong in Strickland.

9 I would like to ask the Court to consider
10 a few things in that regard. First of all, in Federal
11 Rules of Evidence I don't think it has been mentioned yet
12 about the other exceptions 803 24. As I read that it
13 looks to me like this type of evidence --

14 THE COURT: Yes, I talked about 803 24,
15 and if you might recall it doesn't exist anymore. It is
16 807. It has been -- I believe I let some of this
17 evidence in under that exception.

18 Congress for reasons that aren't entirely
19 clear to me, other than housekeeping, moved 803 24 and
20 804 5 which are evidentiary siblings, they do the same
21 thing, depending on whether the declarant is available or
22 unavailable. They have both been consolidated into
23 something called the residual exception at 807.

24 My view of that, unless someone educates
25 me to the contrary, the law hasn't changed one bit, they

1 just gave it a new number.

2 So, I just want to make sure we are
3 talking about the same thing. I think I have let some of
4 the evidence in under one of those exceptions and my
5 memory is I went back at some point and said whoops, I
6 forgot they called it 807.

7 MR. REDICK: I recall that.

8 THE COURT: Your point that the issue you
9 are addressing is of interest is one I am happy to hear
10 about because I think it is the interplay between this
11 proceeding and application of the federal rules and the
12 sentencing stage of the trial which it seems the parties
13 agree that state rules of procedure did not -- excuse
14 me -- state rules of evidence did not apply during the
15 sentencing and mitigation phase produces at least some
16 interesting thinking and perhaps those that renamed the
17 rule would have better spent their time writing how that
18 interplayed rather than rewriting the rule.

19 What is your view of how it fits
20 together?

21 MR. REDICK: I think more importantly than
22 reference to the Federal Rules of Evidence which the
23 Court obviously is already aware of, is something that
24 I think has not been mentioned and that is rule --
25 section 2254 cases, habeas cases, Rule 7. What Rule 7

1 provides --

2 THE COURT: Which part of Rule 7 are you
3 at?

4 MR. REDICK: Rule 7 A of the habeas
5 rules.

6 THE COURT: If motion is not dismissed
7 summarily the judge includes development of the
8 motion --

9 MR. REDICK: What this is for, to the
10 extent it is limited -- it is for the expansion of the
11 record to include additional materials for determination
12 of the relevance of the petitioner.

13 There are a couple things I want to point
14 out. First of all, it is clear based upon several
15 federal cases, United States Supreme Court cases, Harris
16 versus Nelson and Lonchar versus Thomas.

17 THE COURT: Harris versus Nelson.

18 MR. REDICK: 394-286, page 300, 1969 case.

19 THE COURT: All right.

20 MR. REDICK: I am citing that case as I am
21 citing Lonchar versus Thomas, 116 United States Supreme
22 Court, 1293 at page 1300. It is 1996.

23 THE COURT: That is the case I used to
24 issue the stay of execution in this case.

25 MR. REDICK: That's correct.

1 THE COURT: Came out a couple weeks before
2 this case developed.

3 MR. REDICK: And referring to, quoting
4 language from Harris versus Nelson, the court said at any
5 time in the proceedings either on the court's own motion
6 or upon cause shown by the petitioner it may issue such
7 writs or take or authorize such proceeding before or in
8 conjunction with the hearing of the facts that is under
9 Rule 7.

10 In Lonchar versus Thomas, which states
11 from page 1300, the rules afford the district court
12 substantial discretion in the conduct of a case once the
13 answer has been ordered. To decide -- to order the
14 expansion of the record to facilitate disposition of the
15 merits without additional hearing.

16 You can, under Rule 7, if you don't have
17 evidentiary -- and you use Rule 7 if you are having an
18 evidentiary hearing.

19 More to the point of whether you can use
20 Rule 7 on the question of a proffer that is presented
21 that should have been presented in the state trial court,
22 in order to demonstrate prejudice under Strickland, there
23 is a case of Settlemoge versus Fulcomer, 923 F Second
24 284. It is a Third Circuit case, 1991.

25 There is dicta in the decent which the

1 judge is opining about what Rule 7 means. At page 314 he
2 says the Rule 7 procedure might enable the district court
3 to limit the burden of trying the prejudice prong of
4 ineffective assistance claims.

5 And also in Mathiss versus Zant, 903 F
6 Second -- this is an Eleventh Circuit case in 1990 at
7 page 1370, the district court adjudicated prejudice as
8 entirely based upon the basis of, quote, an expanded
9 record, close quote, in documentary evidence.

10 It is our submission that what the Court
11 is trying to determine is the prejudice suffered at the
12 trial in state court. In that sense the really only
13 question is whether or not that jury could have heard
14 that proof.

15 I think that Rule 7 in these cases give
16 the Court an opportunity to avoid a strict application of
17 the Federal Rules of Evidence that would prohibit the
18 Court from considering this evidence that should have
19 been presented.

20 I would also refer the court to the two
21 volume treatise of Federal Habeas Corpus Practice and
22 Procedure at Section 19.5, pages 530 through 534. This
23 is in the second edition, 1994, in which it describes how
24 the primary goal of Rule 7 is to eliminate the need for
25 applying the Federal Rules of Evidence and, quote,

1 relaxes the rules of evidence by giving the court
2 discretion to admit virtually all evidence that is
3 relevant to the determination of the petitioner.

4 THE COURT: All right. If I accept your
5 premise that habeas Rule 7 relaxes the Federal Rules of
6 Evidence, what is the standard for my to judge the
7 admissibility of evidence other than relevancy?

8 MR. REDICK: In a sentencing hearing, Your
9 Honor, relevancy would be the only standard. In terms of
10 hearsay, I think that the state courts have made
11 determinations of reliability of the hearsay. There
12 could be hearsay on hearsay on hearsay that might be
13 excluded from the state court but I think just hearsay is
14 admissible and there may be some outer limit exclusion
15 for unreliability.

16 THE COURT: All right. That is helpful
17 and interesting.

18 I think to recapitulate where I was on
19 this, this was a federal proceeding, Federal Rules of
20 Evidence apply, state rules of evidence don't apply but
21 acknowledging that a determination of what is relevant
22 for this proceeding requires an examination of what would
23 have been admissible at the state proceedings, I think
24 that is how I evaluated it prior to this.

25 I am certainly not on the record and

1 frankly otherwise not considered habeas Rule 7 in that
2 mix.

3 I will take a look at this and see how it
4 all plays together. When we last met, I indicated I
5 would review evidentiary rulings that I made earlier.

6 The practice I have followed was that even
7 when a statement appeared to be excluded by the rules of
8 evidence, I allowed the answers so the record could be
9 built by way of an offer of proof. Frequently the answer
10 wasn't really what everybody expected and didn't require
11 resolution.

12 To the extent in my opinion that I rely on
13 anything that has been objected to and I have sustained
14 that objection then I will need to resolve all of this.
15 I will reconsider it if I need to and I won't if I don't
16 have to.

17 But I had not evaluated it from that
18 point of view. It appears I learn something every day.
19 This may be one thing I learned today. But I will look
20 at it all and see how it all fits together. I am
21 familiar with some of these authorities. I think I have
22 read several of these cases. But I can't, from my
23 memory, remember what the dicta was in the decent. I
24 know what some of the cases stand for. I will have to
25 consider that.

1 Mr. Baker, I will give you an opportunity
2 to put your views in on this, or if you in the briefing
3 process want to address it -- or either of you want to --
4 you are welcome to do it.

5 I am not sure it is going to matter
6 because there hasn't been all that much evidence
7 excluded. But it may.

8 I will reexamine it if I need to on a
9 case-by-case basis, depending on what I determine is the
10 facts that will be found for purposes of deciding this
11 case one way or the other.

12 Anything else we need to take up?

13 MR. BAKER: Nothing from the respondent.

14 MR. MACLEAN: No, Your Honor.

15 THE COURT: Okay. We will consider this
16 case submitted and you have the briefing schedule.

17 As it will be no surprise to you, this
18 case is under my top priority, since I think Congress put
19 the new Anti-terrorism and Death Penalty Act --even
20 though it doesn't apply, it is of great importance and I
21 will try to get on it as quickly as I can.

22 In fact, I have been working on it some
23 this week in terms of going through my notes and
24 gathering my thoughts and that sort of thing.

25 That will conclude this proceeding. When

1 Mr. Tummel gets the record filed, I am sure he will let
2 you know and you can begin the briefing process.

3 Thank you very much.

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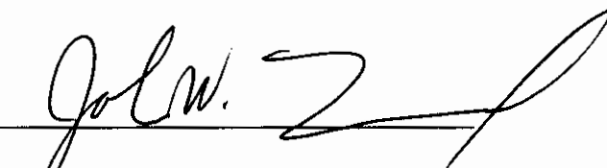
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REPORTER'S CERTIFICATE

I, John W. Tummel, Official Court Reporter for the United States District Court, Middle District of Tennessee, with office at Nashville, hereby certify that I recorded on the Stenograph Shorthand Machine the proceedings held in open court beginning on February 6, 1998, in the matter of: ABU-ALI ABDUR' RAHMAN VS. RICKY BELL; Nashville Civil Case No. 3-96-0380; and that the proceedings in connection with this hearing were reduced to typewriting under my supervision; and that the foregoing is a true and correct transcript of the same.

This the 25th day of February, 1998


Official Court Reporter

CERTIFIED TRANSCRIPT ONLY IF SIGNED IN BLUE INK.